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Intergenerational Equity in Fiscal Policy Reform

MICHAEL DORAN*

I. INTRODUCTION

Previous generations have used government fiscal policy to transfer resources from themselves to their successors and from their successors to themselves; current generations engage in similar intergenerational transfers. Policymakers, however, do not customarily evaluate the intergenerational fairness of fiscal policy in any rigorous way. This follows in part from uncertainty about how to engage the underlying questions. By contrast, policymakers generally rely heavily on formal assessments of how fiscal policy promotes or undermines fairness among members of current generations. They regularly scrutinize tax, appropriations, and entitlement decisions to determine whether particular groups have undue advantages or disadvantages in the distribution or redistribution of wealth. Although policymakers may hold markedly diverse views of what constitutes intragenerational fairness, they share a broad consensus about its importance.

Academics have taken seriously the idea that proper evaluation of fiscal policy requires a rigorous assessment of intergenerational equity, and they have labored to provide policymakers with analytic tools and normative standards to that end. In recent years, public finance economists have developed and refined formal models for measuring intergenerational effects; most prominent among these are “fiscal gap accounting” and “generational accounting.”¹ Philosophers, lawyers, and economists have advanced normative frameworks for assessing intergenerational distributional outcomes. The overarching objective of these inquiries is to provide the foundation for evaluating the intergenerational fairness of fiscal policy decisions, just as public finance theory, legal theory, and political philosophy already provide

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¹ See Section III.A.

the foundation for evaluating the intragenerational fairness of those decisions.

This Article argues for skepticism on these points. More specifically, it argues that the idea of evaluating government fiscal policy along the dimension of intergenerational equity is largely misguided. In sharp contrast to the intragenerational distribution of wealth—where government policy plays an active and commanding role in transferring resources between and among different groups—the intergenerational distribution of wealth is determined mainly by decisions of private actors that fall outside government policy and that may blunt or even reverse the distributional effects of government policy. Unless a far greater share of intergenerational transfers is brought within the scope of government fiscal policy through such unlikely measures as the confiscatory taxation of gifts and inheritances, any coherent framework for evaluating intergenerational equity must incorporate the total distribution and redistribution of wealth across generations, whether determined by fiscal policy, nonfiscal policy, or private activity. That leaves little place for drawing informative conclusions from isolated analysis of fiscal policy.

Part II examines the substantial normative problems encountered by efforts to evaluate intergenerational equity. Most significant among these is the framing problem. Efforts to understand intergenerational equity require the construction of hard but nonetheless arbitrary boundaries between different aspects of government fiscal policy, between fiscal policy and other segments of government policy, and between government activity and nongovernment activity. Outcomes that might appear inequitable when considered only as a matter of fiscal policy can appear entirely defensible when considered against the background of government policy as a whole; but those same outcomes might appear inequitable when considered against the entire intergenerational distribution of wealth resulting from all government and nongovernment activity. This framing problem distinguishes intergenerational normative inquiries from intragenerational normative inquiries. In addition, efforts to evaluate intergenerational equity must resolve difficulties presented by the absence of fixed inputs and the need to coordinate the demands of intergenerational equity with basic norms of liberal democracy. Collectively, these problems suggest that policymakers should be cautious in treating intergenerational equity as a compelling objective of government fiscal policy.

Part III brackets these normative difficulties to consider the analytic problems presented by the formal public finance models for measuring intergenerational effects. As argued there, these models do not

provide a full account of how fiscal policy distributes benefits and burdens across generations, and the partial account that they do provide yields results that are far too incomplete to support robust judgments about intergenerational equity. Although these models facilitate rough conclusions about the intergenerational effects of particular government programs, they do not provide a sufficient basis for making hard evaluative judgments about fiscal policy reform.

Part IV examines intergenerational equity from a different approach. It considers the possibility that policymakers could relegate the problem of intergenerational fairness entirely to the political process. Although there are obvious difficulties with this approach—including the unavoidable fact that not all interested people can participate in the political process when decisions affecting them are made—it would allow for at least partial political resolution of intergenerational questions. In particular, the fact of ubiquitous intergenerational altruism among overlapping generations suggests a limited basis for trusting the political process with intergenerational questions no less than with intragenerational questions.

II. NORMATIVE PROBLEMS IN ASSESSING INTERGENERATIONAL EQUITY

A conclusion about the equity of particular intergenerational effects of government fiscal policy necessarily presupposes a normative account of intergenerational equity. But any such normative account immediately confronts substantial problems. Quite apart from the difficulty of identifying or establishing consensus about the substantive content of equity (which presents challenges in both intergenerational and intragenerational settings), attempts to set forth a normative account of intergenerational equity must overcome framing, input, and coordination problems. These difficulties, which are vexing but manageable in the context of intragenerational equity, present genuine obstacles to assessing intergenerational equity.

A. *The Framing Problem*

There is a basic conundrum in determining what exactly should be included when evaluating intergenerational equity in government fiscal policy.² This problem is foundational: Any effort to measure and then assess the intergenerational effects of government policy requires the drawing of clear but inescapably arbitrary boundaries—such as

² The analysis in this Section benefits from Daryl Levinson's study of common law transactional frames in constitutional adjudication. See Daryl J. Levinson, *Framing Transactions in Constitutional Law*, 111 *Yale L.J.* 1311 (2002) (arguing that common law transactional framing is problematic when dealing with constitutional law issues).

between different segments of fiscal policy, between fiscal policy and other segments of government policy, or between all government activity and all nongovernment activity. Ultimately, the most coherent and defensible frame is one that does not distinguish between the intergenerational effects of government decisions and the intergenerational effects of nongovernment decisions. That expansive frame, however, tells us very little about how we should structure or reform government fiscal policy to achieve intergenerational equity. Instead, it locates the normative question within the realms of moral and political philosophy, so that the immediate relevance of government fiscal policy is almost vanishingly small. Narrower frames, such as those that focus only on discrete government programs, can provide the comfort of specific policy prescriptions, but the prescriptions are as arbitrary as the frames themselves.

1. *The Narrow Frame of Government Programs*

Perhaps the most obvious point of departure in framing the normative account of intergenerational equity in fiscal policy is examination of specific government tax and transfer programs that have intergenerational effects. Among these, the intergenerational transfers under the federal Social Security³ program appear compelling. The original decision to establish Social Security as a fully funded and modest program of "social insurance" was overtaken within a few years by a decision to operate the program on an unfunded basis and by repeated decisions to expand its scope.⁴ As a result, the benefits paid to early program participants far exceeded the economic value of their contributions, and the program redistributed wealth from later participants to early participants.⁵ In present value, those intergenerational transfers amount to approximately \$13 trillion, which is roughly the current size of the U.S. economy.⁶ Additionally, the long-

³ Throughout this discussion, the term "Social Security" refers specifically to the program of Federal Old-Age, Survivors, and Disability Insurance Benefits set forth in Title II of the Social Security Act, 42 U.S.C. § 401 et seq.

⁴ See W. Andrew Achenbaum, *Social Security: Visions and Revisions* 32-37 (1986); Martha Derthick, *Policymaking for Social Security* 213-92 (1979). For additional accounts of the original legislation and the development of the program, see generally Arthur J. Altmeyer, *The Formative Years of Social Security* (1966); Edward D. Berkowitz, *Robert Ball and the Politics of Social Security* 164-213 (2003); J. Douglas Brown, *The Genesis of Social Security in America* (1969); Jerry R. Cates, *Insuring Inequality: Administrative Leadership in Social Security, 1935-54* (1983); Wilbur J. Cohen, *Retirement Policies Under Social Security* (1957); Charles McKinley & Robert W. Frase, *Launching Social Security: A Capture-and-Record Account, 1935-1937* (1970); Edwin E. Witte, *The Development of the Social Security Act* 3-108 (1962).

⁵ Achenbaum, note 4, at 32-37.

⁶ See note 38.

term insolvency of Social Security all but ensures that there will be further intergenerational transfers under the program.

Surely, then, if considerations of intergenerational equity are at all relevant to fiscal policy, they are relevant to Social Security. Policymakers interested in assessing the intergenerational equity of the Social Security program would want to know what justified decisions made in the 1930's and in subsequent decades to impose net burdens on the young and unborn for the benefit of the middle-aged and elderly. Similarly, policymakers who consider possible program reform today would want to understand the obligations of current participants to future participants. But however intuitively attractive those questions may seem, they are the wrong questions to ask. To understand why, it is necessary to consider the conventional account about Social Security and intergenerational equity more closely.

Social Security, the federal government's largest program for redistributing wealth,⁷ provides retirement, survivor, and disability benefits to nearly 50 million participants and their beneficiaries.⁸ The taxes that finance the program comprise employment taxes on the earnings of most employed and self-employed individuals⁹ and income taxes on the benefits of certain program participants.¹⁰ The federal government accounts for these taxes through two trust funds.¹¹ The trust

⁷ Cong. Budget Office, *The Long-Term Budget Outlook 19* (2005), available at <http://www.cbo.gov/ftpdocs/69xx/doc6982/12-15-LongTermOutlook.pdf>; C. Eugene Steuerle & Jon M. Bakija, *Retooling Social Security for the 21st Century: Right and Wrong Approaches to Reform 91* (1994).

⁸ The 2008 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, H.R. Doc. No. 110-104, at 2 (2008), available at <http://www.ssa.gov/OACT/TR/TR08/tr08.pdf>.

⁹ Employees and their employers pay a combined tax equal to 12.4% of employee earnings. IRC §§ 3101(a), 3111(a). Although the tax nominally is imposed separately on employees and employers, employees ordinarily bear the full cost of the tax through lower wages. Peter A. Diamond & Peter R. Orszag, *Saving Social Security: A Balanced Approach* 24 (2004). Self-employed individuals pay a tax equal to 12.4% of earnings. IRC § 1401(a). One-half of the 12.4% tax paid by the self-employed individual is deductible for purposes of the federal income tax. IRC § 164(f). The deduction makes the effective tax rate on the self-employed individual just under 12%, and the exclusion of the employer's share of the 12.4% tax from an employee's income makes the effective tax rate on the employee just under 12%. See Daniel Shavero, *Making Sense of Social Security Reform* 11 (2000). In all cases, earnings are taxed only up to a maximum amount set by statute. IRC §§ 3121(a)(1), 1402(b)(1).

¹⁰ Up to 50% of benefit payments become includible in gross income if the sum of an individual's (or married couple's) modified adjusted gross income and one-half of the individual's (or married couple's) Social Security benefits exceeds \$25,000 (or \$32,000 in the case of a married couple). IRC § 86. Separately, a portion of benefit payments received by a nonresident alien is includible in gross income (subject to contrary treatment under a bilateral tax treaty). IRC § 871(a)(3).

¹¹ 42 U.S.C. § 401(a) (creating the Federal Old-Age and Survivors Insurance Trust Fund and appropriating employment tax revenues to that fund); 42 U.S.C. § 401(b) (creating the Federal Disability Insurance Trust Fund and appropriating employment tax revenues to

funds, which consist of accounting entries on the general books of the U.S. Treasury,¹² serve as the only source of program benefits.¹³ Through the payment of cash benefits to program participants and their beneficiaries, Social Security mitigates the risk that retirement, death, or disability will result in lost or reduced income. Retirement benefits are determined as a function of the participant's earnings,¹⁴ are payable both to the participant and to the participant's spouse,¹⁵ and are indexed for changes in the cost of living.¹⁶ Survivor and disability benefits generally are determined under modified versions of the benefit formula used for retirement benefits.¹⁷

As first enacted in 1935, the Social Security program did not envision significant intergenerational redistribution. The Social Security Act of 1935¹⁸ provided for tax collections to begin in 1937 but delayed benefit payments until 1942.¹⁹ The prefunding of the program drew criticism from both the political left, which objected to the modest

that fund); Social Security Amendments of 1983, Pub. L. No. 98-21 § 121(e), 97 Stat. 83 (appropriating income tax revenues under IRC § 86 and IRC § 871(a)(3) to the trust funds). See generally Cong. Research Service, *Social Security: The Trust Fund* (2005), available at <http://fpc.state.gov/documents/organization/51264.pdf>.

¹² Although they do not hold assets separate from the other assets of the U.S. Treasury, the trust funds do measure the capacity of the Social Security program to make benefit payments as they become due. See generally Shaviro, note 9, at 88-90. As with benefit payments, the administrative costs of Social Security are charged against the trust funds. 42 U.S.C. § 401(g). Amounts credited to the trust funds in excess of current obligations are used to acquire Treasury securities backed by the full faith and credit of the United States. 42 U.S.C. § 401(d). Interest and redemption proceeds from the securities are used for program obligations or are reinvested in additional Treasury securities. 42 U.S.C. § 401(f).

¹³ 42 U.S.C. § 401(h).

¹⁴ A participant's Social Security benefits are determined by reference to her "primary insurance amount" ("PIA"). 42 U.S.C. § 415(a). The participant's PIA, in turn, is determined by reference to her "averaged indexed monthly earnings" ("AIME"). 42 U.S.C. § 415(b). AIME is the average of the participant's indexed monthly earnings for her 35 years of highest earnings. *Id.*

¹⁵ 42 U.S.C. § 402(b) (wife's benefits); 42 U.S.C. § 402(c) (husband's benefits). A minor or disabled child of a participant who has begun to receive retirement benefits is also eligible for benefit payments. 42 U.S.C. § 402(d). Aggregate benefit payments to a family based on the earnings of a single participant are subject to an overall cap. 42 U.S.C. § 403(a).

¹⁶ 42 U.S.C. § 415(i).

¹⁷ Survivor benefits consist of a small single-sum payment, 42 U.S.C. § 402(i), and monthly benefit payments; the monthly benefits are payable to the deceased participant's surviving spouse, 42 U.S.C. § 402(e)-(g), minor or disabled child, 42 U.S.C. § 402(d), and dependent parent, 42 U.S.C. § 402(h). Disability benefits are payable to a participant who becomes disabled prior to reaching full retirement age. 42 U.S.C. § 423. A disabled participant's spouse and minor or disabled child also receive benefit payments. 42 U.S.C. § 402(b)-(d). Both the survivor and disability benefits are indexed to changes in the cost of living, 42 U.S.C. § 415(i), and are subject to per family limits, 42 U.S.C. § 403(a).

¹⁸ Pub. L. No. 74-271, ch. 531, 49 Stat. 620.

¹⁹ Derthick, note 4, at 213-14, 429.

benefits,²⁰ and the political right, which objected to the accumulation of large resources under government control.²¹ For this reason, Congress adopted the Social Security Act Amendments of 1939²² to put Social Security on an unfunded (or “pay-as-you-go”) basis. Under that legislation, Congress effectively spent down the substantial anticipated program reserves, before they had accumulated, by making benefits more generous for early program participants.²³ Congress further expanded program benefits throughout the 1950’s, 1960’s, and early 1970’s.²⁴ Not until legislation in 1977 and 1983 did Congress appreciably reduce program benefits.²⁵

Conventional analysis argues that the consequence of the 1939 legislation and subsequent program expansions was the redistribution of wealth across generations.²⁶ Because benefits paid out of the program are financed only by taxes paid into the program and interest on those taxes, Social Security functions as an elaborate set of zero-sum transactions.²⁷ If any participant receives benefits that exceed the economic value of her contributions, a second participant must receive benefits that fall short of the economic value of his contributions by an amount equal to the excess benefits received by the first participant. If the second participant does not bear that cost, it must be carried as a program debt and passed on to a third, fourth, or later participant. As with any debt, the cost to whomever pays for the ex-

²⁰ Achenbaum, note 4, at 30.

²¹ *Id.* at 30; Derthick, note 4, at 90-91, 143; Altmeyer, note 4, at 88-89. The program was expected to accumulate to \$47 billion by 1980. Derthick, note 4, at 232-33; Altmeyer, note 4, at 88.

²² Pub. L. No. 76-379, ch. 666, 53 Stat. 1360.

²³ Achenbaum, note 4, at 3, 32. Specifically, Congress added benefits for the spouses and dependents of retired participants and for the survivors of deceased participants, amended the benefit formula to increase benefits for many early participants, deferred an increase in employment taxes, and accelerated the payment of the first program benefits from 1942 to 1940. Achenbaum, note 4, at 32-33; Derthick, note 4, at 47, 214, 236, 429.

²⁴ Achenbaum, note 4, at 38-60; Derthick, note 4, at 429-32.

²⁵ Achenbaum, note 4, at 67-74, 81-99; see the Social Security Amendments of 1977, Pub. L. No. 95-216, 91 Stat. 1509 and the Social Security Amendments of 1983, Pub. L. No. 98-21, 97 Stat. 65. For a history of the 1977 legislation, see Derthick, note 4, at 381-411; for a history of the 1983 legislation, see generally Paul Light, *Artful Work: The Politics of Social Security Reform* (1985).

²⁶ See Cong. Budget Office, *The Outlook for Social Security* 18 (2004), available at <http://www.cbo.gov/ftpdocs/55xx/doc5530/06-14-socialsecurity.pdf>. See generally Peter A. Diamond, *Social Security Reform* 65-66 (2002) (stating that design of Social Security in early years caused a large redistribution to initial cohorts of retirees); Michael J. Boskin, Laurence J. Kotlikoff, Douglas J. Puffert & John B. Shoven, *Social Security: A Financial Appraisal Across and Within Generations*, 40 *Nat’l Tax J.* 19, 22 (1987) (stating that Social Security “has been a major vehicle for transferring resources from the younger, richer, working generation to the older, poorer, retired generation”).

²⁷ Sylvester J. Schieber & John B. Shoven, *The Real Deal: The History and Future of Social Security* 112-13 (1999).

cess benefit received by the first participant will be the original amount of the excess plus interest for the intervening period. But because the net transfer has been made, the question is not whether but by whom it will be borne.²⁸

The repeated expansions of Social Security effected precisely this result. Under the 1939 legislation, the program immediately began to pay windfall benefits—that is, benefits exceeding the economic value of taxes—to early participants.²⁹ Subsequent legislation both increased the amount of these windfall benefits and broadened the group that received them.³⁰ The magnitude of the windfalls is apparent from the high internal rates of return that early participants experienced on their program taxes.³¹ The cohort born in 1880, which reached age 65 in 1945, experienced a 25% rate of return on its Social Security taxes; the cohort born in 1890, which reached age 65 in 1955, experienced an 18% rate of return; and the cohort born in 1900, which reached age 65 in 1965, experienced a 12% rate of return.³² In some cases, program benefits were sufficient to effect a full refund not only of lifetime employment taxes, with interest, but also of lifetime federal income taxes.³³

The windfall benefits for early program participants were financed (as a cash flow matter) by participants who were actively working and paying employment taxes and who were accruing benefit claims in

²⁸ Diamond & Orszag, note 9, at 4 (“[O]nce that debt is determined, its cost cannot be avoided: the only issue is how we finance that cost across different generations.”); see also John Geanakoplos, Olivia S. Mitchell & Stephen P. Zeldes, *Social Security Money’s Worth* 4-16 (NBER Working Paper No. W6722, 1998), available at <http://www.nber.org/papers/w6722>.

²⁹ See Achenbaum, note 4, at 32-37.

³⁰ Diamond & Orszag, note 9, at 37; Steuerle & Bakija, note 7, at 108.

³¹ Geanakoplos et al., note 28, at 4-5 (“The real ‘internal rate of return’ is the inflation-corrected discount rate that equates, for each individual, the present value of the stream of social security benefits to the present value of the stream of the taxes paid.”).

³² Dean R. Leimer, *Cohort-Specific Measures of Lifetime Net Social Security Transfers* (Social Security Administration Office of Research and Statistics Working Paper Series No. 59, 1994), at 16, available at http://www.socialsecurity.gov/policy/research_sub41.html [hereinafter Leimer I]. Note that these are real rates of return, that they have been calculated only as to the old-age and survivors insurance component of the program, and that the values presented in the text have been rounded. Many of the results reported in Leimer I have been updated in Dean R. Leimer, *Cohort-Specific Measures of Lifetime Social Security Taxes and Benefits* (Social Security Administration Office of Research and Statistics Working Paper Series No. 110, 2007), available at <http://www.ssa.gov/policy/docs/workingpapers/wp110.pdf> [hereinafter Leimer II]. The methodology in Leimer II diverges from the methodology of Leimer I. Leimer II, *supra*, at 50-52. The results under Leimer II, however, for cohorts born before 1940 generally follow quite closely the results for those cohorts under Leimer I; by contrast, the results “for the most distant [future] cohorts differ substantially” between Leimer II and Leimer I. *Id.* at 53-54.

³³ Steuerle & Bakija, note 7, at 113.

their own right.³⁴ Once those younger participants became eligible for benefits, their benefit payments in turn were financed (as a cash flow matter) by their own successors' taxes.³⁵ As the program has moved forward, each participant has received the benefits promised to her, but the cost of the windfall benefits to the early participants has never been paid off.³⁶ In fact, it has only increased through continued program expansion and accumulating interest.³⁷ As of 2008, the unpaid cost of the implicit debt attributable to early program participants stands at approximately \$13 trillion.³⁸

Well-reasoned estimates locate the turning point from net transfers out of the program to net transfers into the program with the cohort born in 1938.³⁹ That is, previous cohorts have received and will receive more from the program than the economic value of their taxes, but the 1938 cohort and succeeding cohorts have received and will receive less than the economic value of their taxes.⁴⁰ Thus, as compared to the 25% internal rate of return enjoyed by the 1880 cohort, the 1938 cohort will have a rate of return of less than 3%.⁴¹ The cohort born in 1960 is projected to receive a 2.5% rate of return, and the cohort born in 1990 is projected to receive a 2.6% rate of return.⁴² For cohorts born through 2038, the rates of return remain below 3%.⁴³ To put the point in different terms, for program participants born after the Second World War, 33 cents of every dollar in employment taxes finance their own Social Security benefits (assuming a market rate of

³⁴ Diamond & Orszag, note 9, at 37.

³⁵ Shaviro, note 9, at 25-26.

³⁶ Schieber and Shoven argue that the low ratio of beneficiaries to active workers during this era facilitated benefit expansion precisely because the active workers would not experience the full burden of the increased benefit obligations. Schieber & Shoven, note 27, at 96-97. Similarly, Derthick argues that the fact that "[n]early all of the early participants have later received far more than they had paid in taxes" reinforced political inclinations toward program expansion. Derthick, note 4, at 6, 8.

³⁷ Leimer I, note 32, at 43.

³⁸ See Diamond & Orszag, note 9, at 72 (estimating implicit debt at \$11.6 trillion as of 2004); Geanakoplos et al., note 28, at 21-22 (estimating implicit debt at \$9.7 trillion as of 1997). Adjusting those estimates by the consumer price index for the intervening periods—admittedly, a very rough method for updating the values—puts the amount at just about \$13 trillion for 2008.

³⁹ Leimer I, note 32, at 30, 71; Diamond & Orszag, note 9, at 70-72.

⁴⁰ Diamond & Orszag, note 9, at 37, 208-09; see also Geanakoplos et al., note 28, at 6-7. Leimer II, however, locates the turning point at the cohort born in 1932. Leimer II, note 32, at 60.

⁴¹ Leimer I, note 32, at 69, 71; Leimer II, note 32, at 61.

⁴² Leimer II, note 32, at 61-62. The projected rates of return for the 1960 and 1990 cohorts are almost certainly too optimistic; in both cases, it has been assumed (deliberately but counterfactually) that there will be no increase in program taxes or reduction in program benefits to ensure long-term program solvency. *Id.* at 59.

⁴³ *Id.* at 63. Again, this assumes no increase in program taxes or reduction in program benefits.

return); the remaining 67 cents represent a pure tax to finance the transfers made to earlier participants.⁴⁴ Through below-market internal rates of return, participants born after 1937 service the debt incurred in the transfers to participants born before 1938. Because of the zero-sum nature of the program, the total burden imposed on the participants born after 1937 ultimately must equal the \$13 trillion of windfall benefits paid to the participants born before 1938.⁴⁵

Intergenerational redistribution under Social Security is not purely historical; the long-term financial instability of the program effectively ensures that there will be additional transfers among current and future generations. Although Social Security is solvent in the short term,⁴⁶ all long-term measures unambiguously indicate that the program is not solvent over the next 75 years.⁴⁷ Congress could respond

⁴⁴ Steven Caldwell, Melissa Favreault, Alla Gantman, Jagadeesh Gokhale, Thomas Johnson & Laurence J. Kotlikoff, *Social Security's Treatment of Postwar Americans*, 13 *Tax Pol'y & Econ.* 110, 112, 134 (1999).

⁴⁵ John Geanakoplos, Olivia S. Mitchell & Stephen P. Zeldes, *Social Security: In What Form?*, in *Framing the Social Security Debate* 113, 146 (R. Douglas Arnold, Michael J. Graetz & Alicia H. Munnell eds., 1998) ("[i]nvariably, cohorts born after 1937 must give up in the aggregate the whole" amount provided as windfall benefits to cohorts born before 1938). Leimer, however, notes strong reservations about such conclusions. He argues that the "legacy debt concept and measure are critically sensitive to the choice of the interest rate series deemed appropriate for the evaluation of program outcomes" and that "the typical practice [in the literature] of using the trust fund or other market interest rate unadjusted for risk . . . may produce a quantitatively misleading or even qualitatively invalid indication of any 'debt' or 'burden' imposed by the program on present and future cohorts." Leimer II, note 32, at 58. Although it might be appealing to argue that legislators were unaware of these intergenerational effects in the early years of the program, those effects in fact have long been recognized. M. Albert Linton, an insurance executive, urged the first Social Security Advisory Council during the late 1930's not to impose net burdens on future generations. Derthick, note 4, at 234-35. Representative John Byrne objected to the 1950 expansion of the program on the basis of the intergenerational redistribution that would result. *Id.* at 45. He pointedly asked on the House floor how policymakers could justify imposing tax rates on future generations that they would not be willing to impose on current generations. *Id.* at 241-42. In their 1950 study, two Brookings analysts detailed the substantial intergenerational redistribution under the expanding program. Lewis Meriam & Karl T. Schlotterbeck, *The Cost and Financing of Social Security* 173-76 (1950).

⁴⁶ Trustees, note 8, at 2, 7, 32-42.

⁴⁷ Under the principal long-term measure—the calculation of "actuarial balance"—the trust funds are projected to be exhausted in 2041; at that time, the program no longer will be able to make full benefit payments. Trustees, note 8, at 2-3, 43, 53. Instead, benefit payments will have to be reduced to 78% of promised benefits (and will fall again in 2082 to 75% of promised benefits). *Id.* at 8, 18. This 75-year actuarial deficit could be closed by an immediate and permanent increase in Social Security taxes of 1.7 percentage points, an immediate and permanent reduction in Social Security benefits of 11.5%, or immediate transfers from the government's general fund of \$4.3 trillion. *Id.* at 11, 18, 58. If the same assessment of actuarial balance were made over the infinite future, the actuarial deficit would require an immediate and permanent increase in Social Security taxes of 3.2 percentage points, an immediate and permanent reduction in Social Security benefits of 19.8%, or immediate transfers from the government's general fund of \$13.6 trillion. *Id.* at 13, 58. The other long-term measures—the "closed group unfunded obligation" and the

to the financial instability either by enacting or failing to enact legislative reform of the program; in either case, further intergenerational transfers under the program are all but inevitable.

In the absence of legislative reform, there will occur a time in the middle of this century when benefits due under Social Security will exceed the sum of trust fund assets and program revenues. At that point, program administrators would not have the legal authority to make full benefit payments;⁴⁸ instead, they would have to reduce benefit payments by at least 22%.⁴⁹ These reductions would lower the amounts received by retired participants; the reductions, however, would not reduce the amounts paid into the program by those participants. Thus, the primary effect of the reductions would be to impose larger program burdens on participants receiving benefits at or after the middle of the century. By contrast, participants who have received benefits in the past or who are receiving benefit payments today would bear none of the cost of program insolvency.

Any legislative reform intended to prevent or mitigate insolvency necessarily would involve a reduction in program benefits, an increase in revenues, or a combination of the two. For example, Congress could decide to prevent insolvency through a one-time lump-sum tax, payable by participants then subject to employment taxes, equal to the entire program shortfall; this would impose the full burden of insolvency on one or two generations alive and working at the time the tax

“open group unfunded obligation”—also indicate program insolvency. *Id.* at 60-63. Nonetheless, there are critics who argue that program sustainability is not presently in question. See, e.g., Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry?*, 92 *Cornell L. Rev.* 257, 288 (2007) (“the purported long-term challenges facing Social Security either are unlikely to occur or at least do not require immediate action to address possible future problems”); Dean Baker & Mark Weisbrot, *Social Security: The Phony Crisis* 21-37 (1999) (arguing that the standard projections provide no basis for serious concern about the program’s financial survival).

⁴⁸ The Social Security Act provides that benefits may be paid only from the trust funds. 42 U.S.C. § 401(h). The Antideficiency Act prohibits any officer or employee of the federal government from making or authorizing any expenditure or obligation that exceeds the amount available through an appropriation or fund. 31 U.S.C. § 1341(a)(1)(A). Some have argued that, in the event of trust fund exhaustion, participants would have a cause of action against the government for unpaid benefits. See generally Kathleen Romig, *Cong. Research Serv., Social Security: What Would Happen if the Trust Funds Ran Out?* (2007). That point is interesting but irrelevant: Because the courts lack constitutional authority to make federal appropriations, a declarative judgment that a participant is entitled to full benefits would have no effect absent an additional appropriation by Congress to fund those benefits. See generally Thomas J. Nicola, *Whether Entitlement to Full Social Security Benefits Depends on Solvency of the Social Security Trust Funds if Congress Does Not Change the Law*, *Cong. Research Serv. Memorandum* (1998), in *Social Security Reform: Hearings Before the Task Force on Social Security of the H. Comm. on the Budget*, 106th Cong. 223-28 (1999).

⁴⁹ Trustees, note 8, at 8, 18.

is imposed.⁵⁰ At the other extreme, Congress could cancel the program outright—collecting no additional taxes and paying no additional benefits. This would place the full burden on the participants (many of them elderly) who would have paid taxes into the program but would not yet have received their full scheduled benefits.⁵¹ Related but less extreme reforms could include a long-term increase in employment taxes, a long-term decrease in benefits, or a combination of the two. The intergenerational incidence of these reforms would depend on the exact terms of the tax increase or benefit decrease, but plainly different generations would be affected differently.

2. *The Broader Frames of Government and Nongovernment Activities*

As illustrated by the substantial intergenerational transfers that have occurred and likely will occur under Social Security, the narrow frame of government programs yields results that appear normatively relevant to the question of intergenerational equity. The legislative expansions of the Social Security program that began soon after its enactment transferred resources roughly equal to the present size of the U.S. economy from participants who were not then able to participate in the political process to participants who were in full control of their political destiny through their elected representatives. The apparently self-serving redistribution of wealth seems to provide a compelling example of intergenerational inequity and a strong caution about reforms that might be undertaken by current generations to prevent or mitigate program insolvency later in this century.

But that normative conclusion is contingent on the selection of the analytical frame, and the selection of the analytical frame is fundamentally arbitrary, inherently skewed, and certainly wrong. Social Security, like other aspects of government fiscal policy, does not exist in isolation.⁵² The collection of employment taxes and the payment of Social Security benefits are not the only tax and transfer interactions between program participants and the government. Instead, fiscal policy sets up myriad points of contact between government and individuals, and there is no reason—apart from pure semantics—to ex-

⁵⁰ Geanakoplos et al., note 28, at 39-40.

⁵¹ Id.

⁵² Most government transfer and spending programs are not even self-financed in the manner of Social Security. Although Social Security benefits and administrative costs are funded by dedicated employment and income taxes, most other programs—such as food stamps, Medicaid, national defense, and scientific research—are funded at least in part by general government revenues. Moira Herbst, *How Uncle Sam Spends Your Tax Money*, Bus. Week Online, Apr. 13, 2007, available at http://www.businessweek.com/bwdaily/dn-flash/content/apr2007/db20070413_898070.htm.

amine only some of these points when assessing intergenerational fairness. It makes little sense to conclude—as has been argued very forcefully⁵³—that the first generation born after the Second World War was treated unfairly by Social Security if, taking a broader perspective, it becomes clear that Medicare benefits, government-financed research in gerontological medicine, preferential treatment for senior citizens under the federal income tax, and other aspects of government fiscal policy offset the net burden under Social Security. The arbitrariness of the narrow frame becomes self-evident when one considers that the assessment of Social Security as intergenerationally fair or unfair could change entirely if Congress simply re-labeled the program to include other aspects of government fiscal policy that provide net benefits to the seemingly disfavored cohorts: Suddenly, net program losers could become net program winners as the direction of intergenerational transfers changed with the new boundaries between Social Security and other programs.

That suggests that framing the normative assessment of intergenerational equity must include all aspects of government fiscal policy.⁵⁴ But this remains insufficient. The broadened frame still sets arbitrary boundaries that leave out aspects of government policy relevant to any sensible evaluation of intergenerational equity. For example, analysis under a “total fiscal policy” frame finds that the generations born prior to the Second World War generally were net winners, relative to the post-War generations, not only under the Social Security program but under government fiscal policy as a whole.⁵⁵ Analysis of government fiscal policy, however, does not capture the costs imposed and benefits conferred by other aspects of government policy. The enormous contributions that the federal government demanded from these generations during the Second World War do not register as a fiscal policy cost to them any more than the freedom and prosperity that their wartime sacrifices provided register as a fiscal policy benefit to subsequent generations.⁵⁶ Government policies that force mem-

⁵³ Laurence J. Kotlikoff, *Generational Accounting: Knowing Who Pays, and When, for What We Spend* 193-96 (1992).

⁵⁴ As discussed in Part III, fiscal gap and generational accounting attempt to evaluate intergenerational equity using precisely this frame.

⁵⁵ Kotlikoff, note 53, at 194-95.

⁵⁶ This point has been made specifically as a criticism of generational accounting. See, e.g., Richard Goode & C. Eugene Steuerle, *Generational Accounts and Fiscal Policy*, 65 *Tax Notes* 1027, 1029 (Nov. 21, 1994) (“Note in this context [generational accounting] that generations that dedicated lives, as well as forgone earnings, to defense of the country are not measured as having paid any additional ‘tax’ or having made any additional transfer to other generations.”); Daniel Shaviro, *Do Deficits Matter?* 159 (1997) (“[G]enerational accounting is limited to fiscal policy and thus mostly cannot adjust for generational differences in benefit from the noncash goods and services that the government provides, in

bers of *Generation A* to fight in battle and then pay outsized public pensions to its remaining members have not obviously favored or disfavored *Generation A* relative to *Generation B*, none of whose members are conscripted and all of whose members receive smaller public pensions. To make the same point by looking forward rather than backward, a hypothetical policy under which government implements immediate and substantial restrictions on carbon emissions might impose considerable costs on current generations and confer considerable benefits on future generations. But any attempt to assess the intergenerational effects would miss those costs and benefits entirely if the frame were limited to government fiscal policy.

Enlarging the frame to the next aperture does not eliminate the anomalies. Arguably, one could attempt to assess the intergenerational effects of government policy in its entirety. That, of course, would present real problems of valuing nonpecuniary costs (such as compulsory military service) and benefits (such as reduced climate change) and making such costs and benefits commensurable with each other and with pecuniary costs and benefits (such as taxes and transfer payments). Even assuming those problems could be overcome, a framework broadly defined to assess the intergenerational equity of all government policy would make sense only by ignoring the intergenerational effects of nongovernment activities. If nongovernment intergenerational transfers were small relative to government intergenerational transfers, it might be possible to posit a cogent and meaningful norm of intergenerational equity that addresses only government activities. But nongovernment transfers between generations are far too large⁵⁷ to be ignored in a normative account of intergenerational equity; it makes as little sense to segment government and nongovernment effects in this context as it does to segment the effects of one government tax or transfer program from another. Even when conceived broadly, government policy is only one medium through which individuals transfer wealth to or from their successors.⁵⁸ Although we might be able to make interesting observations about how current generations treat future generations through government policy, those observations hardly provide a sound basis for making judg-

detriment such as regulatory burden, and in noncash contributions to the government such as conscripted military service.”).

⁵⁷ See notes 78-82.

⁵⁸ See, e.g., Shaviro, note 56, at 160 (“[E]ven focusing purely on the overall activities of the government provides too narrow a focus for assessing generational equity. . . . [G]overnment policy embraces only a small portion of the total interaction between present and future generations.”).

ments about intergenerational equity if we systematically ignore all nongovernment activity that complements or offsets those policies.⁵⁹

An expansive frame that encompasses both government activity and nongovernment activity, however, cannot yield conclusions that deliver any meaningful normative payoff about government policy as such. Within this frame, government policy is simply one aspect of intergenerational transfers (just as, by analogy, Social Security is only one aspect of government fiscal policy). At that point, the question about whether government treats different generations fairly devolves into a nearly amorphous question about whether the sum total of human history treats different generations fairly. Assessing the intergenerational effects of government policy—as opposed to the intergenerational effects of everything—requires a less expansive frame. But that less expansive frame would have to treat nongovernment activity as exogenous to government activity; and one would then be back into the thick of choosing among narrower and necessarily incomplete frames. Any such choice would be arbitrary, and the normative conclusions suggested by the frame would be ultimately misleading.⁶⁰

Each of the possible frames for evaluating intergenerational transfers is problematic, and none presents itself as the clear basis for meaningful normative conclusions about government fiscal policy. The case always can be made that a broader or narrower frame is more appropriate, and government programs, policies, or actions that might appear equitable to future generations when the intergenerational effects within one frame are considered may appear inequitable when the effects are considered within a broader or narrower frame.⁶¹

⁵⁹ See, e.g., *id.* at 153-54.

⁶⁰ Shaviro criticizes generational accounting as dependent on too narrow an analytic frame. See Shaviro, note 56, at 159-60. But rather than rejecting generational accounting on that basis, he argues that it is “[p]erhaps the best tool for enhancing our understanding of who wins and loses from alternative reforms.” Daniel Shaviro, *Understanding the Generational Challenge*, 75 *Tax Notes* 714, 716 (May 5, 1997). Shaviro’s answer to the framing problem is to widen the scope so that the question of intergenerational equity is posed as to the “overall nature and amount of what we take and what we leave”—which “depends in part on savings rates and net capital formation, construed to include human capital and all changes to depletable and degradable resources.” Shaviro, note 56, at 164 (emphasis in original). Again, that very expansive frame cannot yield meaningful normative conclusions about the intergenerational effects of what government does. Shaviro partly acknowledges this, arguing that the “broad perspective merely describes the scope of our normative inquiry; it does not immediately suggest any answers.” *Id.* But that assessment is too optimistic; what the expansive frame does suggest is that intergenerational equity is not a coherent end of government policy as such.

⁶¹ As Levinson puts the point in the context of constitutional adjudication, determinations of whether a transaction between government and private citizens increases or reduces the welfare of the private citizens “depend . . . crucially, on which government harms and benefits are included within the relevant transaction.” Levinson, note 2, at

The framing problem can reasonably be set aside where the purpose of the inquiry is limited. If all we want to know is the intergenerational effects of the taxes and transfers that fall under the government label of Social Security (assuming that this is worth knowing), we can undertake the analysis within that framework. The results, of course, are limited by the arbitrary parameters of the analysis. But the framing problem becomes more significant when the results are intended to ground normative conclusions. The judgment that an older generation unduly benefits under the Social Security program at the expense of later generations implies that, to the extent possible, the older generation should give back its windfall and reverse the inequity. But that policy prescription appears fundamentally wrong if a broader frame indicates that the older generation on the whole has been treated no better than its successors; and it appears fundamentally right if a still broader frame indicates that the older generation has benefited at the expense of those successors after all.

The framing problem is evident in the specific normative accounts of intergenerational equity advanced by public finance economists and legal scholars analyzing government fiscal policy. These accounts necessarily separate fiscal policy from other aspects of government policy and from nongovernment activity; in so doing, they necessarily ignore many intergenerational effects that bear on the question of fairness across generations. Consider the possibility of a “no-transfer norm” under which government fiscal policy would result in no intergenerational transfers of wealth.⁶² This norm has at least a superficial appeal: It purports to effect equal treatment of all generations because it requires each generation to provide exactly for itself without taking resources from any other generation. But the prescriptive power of the no-transfer norm is limited by the boundaries of its frame: The norm has nothing to say about intergenerational transfers made outside government fiscal policy, which may complement or offset the effects of fiscal policy and which may correct or exacerbate intergenerational inequities in the status quo.⁶³ Not much is achieved by maintaining that intergenerational equity requires fiscal policy not to tax future generations to pay for consumption by current generations if other aspects of government policy and private activities—which by definition fall outside the norm—would have precisely that effect.

1378. For a parallel argument in the context of measuring the intragenerational distributive effects of tax and nontax policy, see Michael J. Graetz, *Paint-by-Numbers Tax Lawmaking*, 95 Colum. L. Rev. 609, 657, 661 (1995).

⁶² Shaviro, note 56, at 152-57.

⁶³ *Id.* at 153-54.

Laurence Kotlikoff argues that the proper end of fiscal policy in its treatment of different generations is “generational balance.”⁶⁴ For Kotlikoff, generational balance is achieved when government imposes the same net tax burden on each generation.⁶⁵ Thus, Kotlikoff’s analytic work on generational accounts—which indicates that net tax burdens increased steadily throughout the 20th century and will increase further for future generations⁶⁶—demonstrates, in his view, the intergenerational inequity of current government fiscal policy. Kotlikoff’s position has the virtue of suggesting specific prescriptive outcomes: Where generational accounts are out of balance, they should be rebalanced either by increasing taxes on current generations or reducing spending for current generations.⁶⁷ But, as with the no-transfer norm, the payoff of these prescriptive implications is cabined by the frame. If government confers benefits on future generations or imposes costs on current generations that are not captured in the analysis—either because the analysis does not incorporate all aspects of fiscal policy or because the benefits and costs are provided outside fiscal policy or even outside government policy—the mandate that government take corrective action to reset the generational balance becomes fundamentally suspect.

Tyler Cowen offers a more expansive norm of intergenerational equity in what he calls the “principle of growth.”⁶⁸ That principle—which Cowen grounds in “deep concern for the distant future”⁶⁹—would require structuring fiscal policy to maximize the rate of sustainable economic growth.⁷⁰ Thus, he would evaluate policy decisions by “simply ask[ing] whether a given policy is likely to increase or de-

⁶⁴ Kotlikoff, note 53, at 218-19; Jagadeesh Gokhale & Laurence J. Kotlikoff, *Generational Justice and Generational Accounting*, in *The Generational Equity Debate* 76-82 (John B. Williamson, Diane M. Watts-Roy & Eric R. Kingdon eds., 1999).

⁶⁵ Kotlikoff, note 53, at 218-19; Gokhale & Kotlikoff, note 64, at 82-83.

⁶⁶ See Section III.A; Kotlikoff, note 53, at 126-30; Gokhale & Kotlikoff, note 64, at 83-84.

⁶⁷ Gokhale & Kotlikoff, note 64, at 82-83; Alan J. Auerbach, Jagadeesh Gokhale & Laurence J. Kotlikoff, *Generational Accounts: A Meaningful Alternative to Deficit Accounting*, 5 *Tax Pol’y & Econ.* 55 (1991) (detailing generational accounts as an alternative to government deficit accounting and providing alternative solutions for out-of-balance generational accounts).

⁶⁸ Tyler Cowen, *Caring About the Distant Future: Why It Matters and What It Means*, 74 *U. Chi. L. Rev.* 5, 16 (2007). It is actually not clear what status Cowen contemplates for the principle of growth. He refers to it both as a “rough-and-ready rule of policy evaluation” and as “a useful practical rule.” *Id.* at 16-17.

⁶⁹ *Id.* at 13.

⁷⁰ *Id.* at 16. By “economic growth” he means gross domestic product, modified to include “leisure time, household production, and environmental amenities.” *Id.* at 17. He tempers his claim by conceding that sustainable economic growth should not override “inviolable human rights.” *Id.*

crease the rate of economic growth.”⁷¹ His principle suggests that the choice between current and future consumption generally should be resolved in favor of future consumption.⁷² This would imply that each generation should prefer the well-being of its successors over itself, so that consumption always will be deferred. But, as with the no-transfer and generational-balance norms, Cowen’s norm encounters the framing problem. Although Cowen’s frame reasonably encompasses more than just government fiscal policy, his principle of growth does not account for the intergenerational effects of nongovernment activities that may complement or offset the intergenerational effects of government policy.

These and similar attempts to formulate a normative account of intergenerational equity for government fiscal policy in particular or even for government policy as a whole are thus incomplete. It makes little sense to evaluate whether fiscal policy treats different generations equitably when other aspects of government policy also bear on the distribution of benefits and burdens across generations; and it makes little sense to evaluate whether government policy in its entirety treats different generations equitably when transfers made through the decisions of individuals and nongovernment institutions complement and offset the intergenerational effects of government policy.⁷³ Shaviro was no doubt right, then, to suggest that government fiscal policy should not be measured against a norm of intergenerational equity.⁷⁴ He argues that the question of intergenerational equity in fiscal policy cannot meaningfully be separated from the question of how much saving is appropriate,⁷⁵ and, on that point, he observes that “[t]he most defensible stance” is “skepticism concerning

⁷¹ *Id.* at 27.

⁷² Cowen’s treatment of this question is equivocal. See *id.* at 29-31.

⁷³ See also Louis Kaplow, *Discounting Dollars, Discounting Lives: Intergenerational Distributive Justice and Efficiency*, 74 U. Chi. L. Rev. 79, 87-88 (2007) (arguing that “it is incomplete and potentially misleading to suggest that the present generation does (or does not) have an obligation to a future generation to do one specific thing or another, such as cleaning up the environment, conserving nonrenewable resources, or avoiding accumulation of a large debt”).

⁷⁴ Shaviro, note 56, at 180-85. Actually, Shaviro is elusive on this point. Shortly after publishing his skeptical argument, he suggested in a brief article that “the best course . . . may be to spread the pain [of fiscal sacrifice] widely by requiring all age groups to share it in some measure, rather than deeply by making a few pay in full.” Shaviro, *Generational Challenge*, note 60, at 716. More recently, he argued that “it is difficult to specify the optimal intergenerational distribution policy,” but he pointedly declined to dismiss the idea of intergenerational equity in fiscal policy as not meaningful. Daniel Shaviro, *Reckless Disregard: The Bush Administration’s Policy of Cutting Taxes in the Face of an Enormous Fiscal Gap*, 45 B.C. L. Rev. 1285, 1332 (2004) [hereinafter *Reckless Disregard*]. Thus, it is not quite clear how deep his skepticism on this point runs.

⁷⁵ Shaviro, note 56, at 168-76.

any strong claims about the proper level of saving.”⁷⁶ To pose the question of intergenerational equity is necessarily to pose a question that cannot be answered meaningfully without considering the entire distribution of benefits and burdens among generations. Framing the question in a way that excludes nongovernment activity necessarily yields arbitrary, incomplete, and unreliable outcomes; a norm of intergenerational equity must take account of both government and nongovernment activity. In other words, intergenerational equity is not a question specifically for government policy; it is fundamentally a question of political and moral philosophy.

It might be objected that this criticism sets an unnecessarily high standard for making normative evaluations about intergenerational equity. Pushed to the extreme, it suggests that evaluative statements about intergenerational equity cannot be made unless one can account for all conceivable transfers between and among generations, which is plainly not practicable. An alternative position would be to make the observations that government fiscal policy does have intergenerational effects (as well illustrated by Social Security) and that it may be possible to determine the direction and rough magnitude of those effects (again as illustrated by Social Security). Those observations imply that, even if we cannot make broad assessments about the intergenerational equity of government fiscal policy or government policy as a whole, we can make normative evaluations at the margins about whether a particular government program or a potential reform to a particular government program is more or less equitable in its intergenerational effects. Thus, for example, even if there is not much value to labeling the historic intergenerational transfers under Social Security as fair or unfair, there would be considerable value in assessing the intergenerational fairness or unfairness of increasing employment taxes rather than reducing retirement benefits as a mechanism for addressing Social Security insolvency.

But that is simply another way of begging the question. Although it may be possible, within limits, to make quantitative judgments about the intergenerational effects of a particular government program or a potential reform to a particular government program, it does not follow that the quantitative judgments can support normative conclusions. To conclude that one course of action—such as increasing Social Security employment taxes—is more intergenerationally equitable than another course of action—such as reducing Social Security benefits—presupposes a normative evaluation about the status quo. If the status quo is inequitably skewed in favor of future generations, a policy that would shift resources from the future to the present (as

⁷⁶ *Id.* at 184 (emphasis in original).

might be the case with an increase in Social Security employment taxes) would increase intergenerational equity at the margin; but such a change would decrease intergenerational equity at the margin if the status quo is inequitable to future generations. Unless one has a meaningful account of the intergenerational equity or inequity of the status quo, attaching normative value to the particular intergenerational effects of discrete policies or policy reforms remains little better than guesswork.

3. *The Frames of Intragenerational Equity*

This framing problem is different from—and more complicated than—the framing problems that arise in the context of assessing intragenerational equity. Superficially, the two sets of framing concerns seem similar. In both cases, there is an intuitive appeal to assessing particular government programs or policies. Thus, just as policymakers may want to evaluate whether Social Security equitably distributes resources across generations, they may want to assess as well whether Social Security equitably distributes resources within generations (for example, from wealthier participants to poorer participants). Similarly, closer analysis reveals that, in both cases, the program-specific frame is too narrow. But the ability to make meaningful normative evaluations about government policy along the dimension of intragenerational equity and the ability to do so along the dimension of intergenerational equity diverge as the relevant frames widen. The difference lies in the magnitude and importance of nongovernment wealth transfers within and across generations.⁷⁷

Most intragenerational redistribution in the United States today occurs through government policy. Although individuals and nongovernment institutions undertake a non-negligible amount of altruistic intragenerational redistribution (for example, through religious and charitable organizations), the primary mechanism for transferring wealth from the better off to the worse off (or, through the depravity of politics, from the worse off to the better off) occurs through government programs and policies. Thus, when evaluating intragenerational equity, consideration of the distributive effects of government policy, without regard to the distributive effects of nongovernment decisions, sets a cogent framework for normative analysis. By contrast, the intergenerational transfers effected through individuals and nongovernment institutions are substantial. Reasonable estimates place the amount of wealth transferred across genera-

⁷⁷ Particular thanks are due here to Mitchell Kane for emphasizing the importance of this point.

tions through gifts and bequests at over \$400 billion each year,⁷⁸ with some estimates expecting cumulative intergenerational transfers to reach over \$40 trillion between 1998 and 2052.⁷⁹ Inherited wealth alone represents as much as 80% of total private assets in the United States.⁸⁰ Although government programs and policies unquestionably effect intergenerational redistribution—the Social Security program alone has moved \$13 trillion among different generations⁸¹—the size and salience of nongovernment intergenerational transfers indicate that government is not the primary vehicle for such redistribution. For whatever reason, individuals exhibit substantially more altruism across generations than within generations.⁸²

The implication of this difference between intragenerational transfers and intergenerational transfers is that it is possible to make cogent normative evaluations about whether government policy, considered alone, is intragenerationally fair. Assuming that one can adequately account for the intragenerational distribution of all relevant benefits and burdens of government policy,⁸³ one can sensibly determine whether government policy has been fair or unfair. Even though nongovernment transfers will have been left out of the analysis, those transfers are not so large, relative to the government transfers, as to undermine the reliability of the assessment. But the intergenerational context demands that nongovernment transfers be taken into account along with the government transfers; indeed, the nongovernment transfers likely are more important in this context than the government transfers. As emphasized above, however, a frame that does not distinguish between the intergenerational effects of government policy and the intergenerational effects of private decisions does not yield normative judgments specific to government pol-

⁷⁸ Lily Batchelder, *Taxing Privilege More Effectively, in the Path to Prosperity: Hamilton Project Ideas on Income Security, Education and Taxes* (Jason Furman & Jason Bardoff eds., forthcoming 2008).

⁷⁹ John J. Havens & Paul G. Schervish, *Why the \$41 Trillion Wealth Transfer Estimate Is Still Valid: A Review of Challenges and Questions*, 7 *J. Gift Planning* 11 (2003).

⁸⁰ Laurence J. Kotlikoff, *Intergenerational Transfers and Savings*, 2 *J. Econ. Persp.* 41, 43 (Spring, 1988); see also William G. Gale & John Karl Scholz, *Intergenerational Transfers and the Accumulation of Wealth*, 4 *J. Econ. Persp.* 145, 154-55 (Fall 1994) (arguing that bequests and inter vivos transfers represent 63% of private assets). Shavero also emphasizes the substantiality of private intergenerational transfers. See Shavero, note 56, at 153-54.

⁸¹ See note 38.

⁸² As Levinson suggested (in conversation), the increases in standards of living from one generation to the next reveal significant intergenerational altruism.

⁸³ The practical difficulty of that task should not be minimized.

icy. Any conclusions that the frame yields will be conclusions about life, not about government.⁸⁴

B. *The Inputs Problem*

Normative accounts of intergenerational equity also face a substantial inputs problem. The contrast to normative accounts of intragenerational equity is very sharp here. In the case of intragenerational equity, the amount of wealth to be distributed and the number and characteristics of persons among whom that wealth is to be distributed are given or, in any event, can be treated as given. In the case of intergenerational equity, neither the amount of wealth to be distributed across generations nor the number or characteristics of generations are exogenous to the normative questions at issue. Without fixed inputs, the exercise of determining the normative content of intergenerational equity quickly becomes a conundrum.

Begin with the proposition that questions about the fair distribution of wealth require consideration of actual outcomes. This approach (which can be associated with the argument of Liam Murphy and Thomas Nagel concerning tax equity⁸⁵) does not inquire how much has been transferred away from an individual, group, or generation relative to what the individual, group, or generation had before the transfer, and it does not inquire how much has been transferred to an individual, group, or generation relative to what the individual, group, or generation had before the transfer. Rather, it inquires how much

⁸⁴ Two examples from the philosophical literature illustrate the indeterminacy of intergenerational equity when set within such a broad frame. Jan Narveson appeals to "person-regarding utilitarianism" to establish the existence of obligations to future generations. Jan Narveson, *Future People and Us*, in *Obligations to Future Generations* 38-60 (R.I. Sikora & Brian Barry eds., 1978). Narveson argues that utilitarianism implies that "what we owe to future generations is neither Everything nor Nothing, but merely Something." *Id.* at 60. By contrast, Robert Elliot (extending Robert Nozick's work) promises that libertarianism implies "extensive obligations to future generations." Robert Elliot, *Future Generations, Locke's Proviso and Libertarian Justice*, 3 *J. Applied Phil.* 217, 218 (Oct. 1986). Elliot argues that Locke's proviso about the acquisition of resources—that "enough and as good be left for others"—implies that any individual, "no matter where the person is located historically," has a right to "how things would have been for him in the state of nature." *Id.* at 219, 224. Although this suggests a duty to conserve resources, the duty is limited to those resources that would have been available in the state of nature—such as "clean air, pure water and even aesthetically appealing landscapes." *Id.* at 224-25. But one would be hard pressed to agree that this constitutes an "extensive" obligation to future generations. On its face, this duty applies to no portion of the stock of human wealth beyond natural resources. It implies, for example, that one generation could consume all its own capital and all the capital of the next several generations. As long as the profligate generation preserved "clean air, pure water and . . . aesthetically appealing landscapes," it would discharge its intergenerational obligations.

⁸⁵ See Liam Murphy & Thomas Nagel, *The Myth of Ownership: Taxes and Justice* 3-39 (2002).

an individual, group, or generation has relative to other individuals, groups, or generations after all the transfers have been taken into account. On this perspective, intergenerational equity requires equitable outcomes under the sum total of distributions across generations (much as, on Murphy and Nagel's view, intragenerational equity requires equitable outcomes after taking into account the effects of all government taxes and transfers).

The inputs difficulty arises because any norm of intergenerational equity that compares distributional outcomes across generations must posit the total amount of wealth available for distribution across generations. The total amount of wealth available for distribution across generations, however, depends on decisions made by each generation, and those decisions should depend on the norm of intergenerational equity (assuming that the norm is at all relevant). Or, to put the same point in slightly different terms, to the extent that any one generation follows its norm of intergenerational equity in determining how much to transfer to its successor generations, the amount of wealth available for distribution across generations is simultaneously a determinant of the normative analysis and a product of the normative analysis because how much wealth there will be to distribute among all generations depends in part on how that generation defines its obligations to future generations. A normative account that requires nothing more than passing to the next generation what was received from the prior generation⁸⁶ implies a smaller sum of wealth available for distribution across all generations than does a normative account that requires savings for the benefit of future generations.⁸⁷

This inputs problem is true not only of the wealth to be distributed but also of the number of generations and the characteristics of those

⁸⁶ See Subsection III.B.3 (discussing Ackerman's notion of trusteeship).

⁸⁷ See *id.* (discussing Rawls' just-saving principle). Consider, for example, the point made by Geoffrey Heal in attempting to establish the proper discount rate for intergenerational effects:

If . . . future generations are richer than the present generation, then within a utilitarian framework the value of a marginal unit of consumption to them will be less than to us, and this will be reflected in the consumption discount rate. . . . If consumption were to be falling rather than rising over time, this effect would go into reverse and future increments of consumption would be more highly valued than present ones. The discount rate could be negative.

Geoffrey Heal, *Discounting: A Review of the Basic Economics*, 74 U. Chi. L. Rev. 59, 65 (2007). The relative wealth of current and future generations is, of course, the point that a norm of intergenerational equity would be meant to resolve. As Douglas Kysar argues: "[E]very distribution of resources between generations gives rise to a different market equilibrium, including within that equilibrium a resultant market rate of interest that reflects the opportunity cost of capital"; thus, where (as in environmental law) the inquiry "is concerned precisely with the analytically prior question of resource distribution among generations, it does not make sense to hinge such policymaking on the existing discount rate." Douglas A. Kysar, *Discounting . . . on Stilts*, 74 U. Chi. L. Rev. 119, 130-31 (2007).

generations. Derek Parfit famously argued that “we can easily affect the identities of future people” (an element of what he called the “Non-Identity Problem”), and he observed that this frustrates our ability to ground “beliefs about our obligations to future generations.”⁸⁸ Although we might pursue actions that would have bad effects for future generations (such as depleting natural resources), the Non-Identity Problem implies that those actions are “worse for no one” because our actions, in addition to depleting natural resources, will also change the identities of future people.⁸⁹ By extension, the number of future generations, the size of those future generations, and the relevant characteristics of those future generations derive in no small part from decisions made by current generations. Just like the total amount of wealth available across time, the number and identity of generations across time cannot be treated as exogenous. How many future generations there will be and what those future generations will have depends on what we transfer to them; what we transfer to them depends on what we believe we ought to transfer to them; but what we believe we ought to transfer to them depends on how many of them there will be and what they will have.

Contrast the case of intragenerational equity: There, normative accounts effectively can assume that the relevant question is how the sum of current wealth should be distributed or redistributed among existing persons. Although not known with precision, these can be treated as fixed. To use a familiar metaphor, the question can be treated as one of how a pie of a given size will be divided among those who claim entitlement to a slice. In the case of intergenerational equity, however, neither the quantum of wealth nor the number of those among whom the wealth is to be distributed can be taken as given.⁹⁰ To continue the metaphor, both the size of the pie and the number of generations with a claim to it are open questions and, in fact, will be determined partly by the question of how large each slice should be. This does not imply that the normative analysis for intergenerational equity is inescapably circular; it does imply, however, that the normative analysis is very elusive. Approaches and concepts that are famil-

⁸⁸ Derek Parfit, *Reasons and Persons* 377, 451 (1984).

⁸⁹ *Id.* at 361-64.

⁹⁰ See Peter Laslett & James S. Fishkin, Introduction: Processional Justice, in *Justice Between Age Groups and Generations* 1 (Peter Laslett & James S. Fishkin eds., 1991) (arguing that “[p]rinciples of justice, equality, and utility that yield reasonable conclusions for fixed population sizes over short periods begin to produce bizarre results once cohort sizes or total population sizes or both vary over time”); Cass R. Sunstein & Arden Rowell, On Discounting Regulatory Benefits: Risk, Money, and Intergenerational Equity, 74 *U. Chi. L. Rev.* 171, 200 (2007) (discussing the baseline ethical obligations owed by the present to the future for comparison to determine any compensatory actions that need to be taken currently).

iar from intragenerational equity break down in the case of intergenerational equity. Intuitively appealing distributional norms, such as treating everyone the same or equalizing post-distributional outcomes, falter in the absence of fixed inputs or points of reference—when we cannot take as given any particular level of wealth or well-being of future generations or even the existence of any particular future generations.

C. The Coordination Problem

Even if one could set out a normative account of intergenerational equity that dealt adequately with the framing problem and the inputs problem, it still would be necessary to coordinate the requirements of intergenerational equity with other normative commitments. James Fishkin makes the very powerful point that credible notions of intergenerational equity stand in tension with basic principles of liberal theory.⁹¹ It is not by any means clear that the competing normative demands can be reconciled.

Consider first the problem of squaring intergenerational equity with the basic principle of self-determination. Bruce Ackerman attempts to merge the two in his notion of “trusteeship” in “the liberal state.”⁹² Ackerman’s idea of intergenerational equity centers on the argument that each generation must “arrange its affairs so as to refrain from making members of the next worse off than the present occupants of our planet.”⁹³ More specifically, Ackerman argues that, in the liberal state, each child is “entitled to an endowment that is no worse than . . . that provided to any of his agemates . . . [and] that obtained by any older citizen with whom the younger citizen can converse.”⁹⁴ In other words, the “per capita wealth” of each generation must be “equal to” that of its predecessor generation.⁹⁵ This implies that each generation has a duty to preserve and transfer to its successors resources sufficient to satisfy the requirement of equal endowments among genera-

⁹¹ James S. Fishkin, *The Limits of Intergenerational Justice*, in *Justice Between Age Groups and Generations*, note 90, at 62, 71-73.

⁹² Bruce A. Ackerman, *Social Justice in the Liberal State* 223 (1980).

⁹³ *Id.* at 213.

⁹⁴ *Id.* at 217.

⁹⁵ *Id.* at 223.

tions.⁹⁶ This, Ackerman indicates, ensures that those of different generations enjoy undominated equality.⁹⁷

Ackerman's articulation of the notion that intergenerational justice requires equal treatment of different generations has considerable appeal; it echoes Fishkin's observation that "[t]he intuitive idea is that justice should be neutral among generational cohorts."⁹⁸ Still, Ackerman's requirement of "equal endowments" suggests that total wealth likely would remain stagnant over time. The trusteeship envisioned by Ackerman merely requires that each generation pass along to the next generation the level of wealth that it inherited.⁹⁹ Thus, any wealth generated by the activities of a generation that exceeds the wealth of the initial endowment may be freely consumed by that generation. If this principle were taken to its limits by each generation, the endowment that would pass from one generation to the next would be little, if anything, more than what would be found in the state of nature.¹⁰⁰

More importantly, Ackerman's trusteeship principle does not effect the reconciliation of intergenerational equity and "undominated equality" that he intends. Ackerman specifically argues that intergenerational trusteeship follows from the "plainest . . . obligation" of the first generation to pass along its "inheritance" of undominated equality; he argues that earlier generations may not exercise the "distinctive form of power" that "temporal priority gives the old . . . over the young."¹⁰¹ In seeking to safeguard the right of a later generation to undominated equality, however, Ackerman effectively has forced upon the later generation outcomes that it may or may not actually want. Assume, for example, that several generations leave endow-

⁹⁶ In a similar vein, Fishkin suggests as a possible norm of intergenerational equity "a requirement of equal per capita sacrifice (over the long term) for generational cohorts for the contributions they are required to make for dependent portions of the population (whether those portions are for the elderly, the disabled, or the young)." Fishkin, note 91, at 72. Similarly, Kotlikoff's notion of intergenerational equity requires the same net tax rates for every generation. See Section IV.A. Where Ackerman posits the intergenerational equity norm in terms of equal endowments, Fishkin posits the norm in terms of equal sacrifice and Kotlikoff posits the norm in terms of equal tax rates. See Kotlikoff, note 53, at 218-19. Each, however, takes the position that just or fair relations between generations demand equal treatment of those born into different generations.

⁹⁷ Ackerman, note 92, at 224.

⁹⁸ Fishkin, note 91, at 72. Cf. Dexter Samida & David A. Weisbach, *Paretian Intergenerational Discounting*, 74 U. Chi. L. Rev. 145, 153-54 (2007) (adopting the assumption that "intergenerational equity requires each generation to have the same marginal utility of consumption (or absolute utility, depending on our social welfare function)").

⁹⁹ Ackerman, note 92, at 224.

¹⁰⁰ Ackerman makes clear that trusteeship does not require a generation to transfer to its successors any wealth beyond that received from its predecessor. Ackerman, note 92, at 224.

¹⁰¹ *Id.* at 221.

ments to their successors that are greater than the endowments they inherited; assume, in other words, that the liberal state accumulates wealth over time. Assume also that, at a point of economic hardship, one generation, *Generation M*, which has inherited wealth from previous generations, observes Ackerman's requirement of trusteeship and, in acting to ensure equal endowments for successor generations, makes substantial sacrifices to its own well-being. If on reaching maturity, the next generation, *Generation N*, regrets the sacrifices made by *Generation M* and expresses a preference that *Generation M* had devoted significantly greater resources to its own well-being, *Generation N* will find that *Generation M* has in fact exercised its "distinctive form of power"—not by transferring too few resources to *Generation N* but by transferring too many.

Thus, if Congress in 1935 had refused to enact President Roosevelt's proposal for the Social Security program or if Congress in 1939 and later years had refused to expand the scope of Social Security benefits payable to early program participants, later generations of Americans might sincerely regret that so many of their predecessors lived their final years in poverty; they might sincerely regret, in other words, inheriting a society in which government policy passed a smaller program burden forward to later generations but permitted widespread deprivation among previous generations. Certainly, a response that the earlier generations were acting to preserve the equality of endowment that future generations should have in a liberal state would fail to persuade the later generations that the earlier generations had in fact acted properly.

This reflects Fishkin's point about conflict between intergenerational equity and basic principles of liberal theory.¹⁰² Although Fishkin's objective is to demonstrate that the demands of intergenerational equity can constrain the liberties of earlier generations (for example, the liberty of earlier generations to procreate), the constraints also can apply to the liberties of later generations. First generations come first, and their actions necessarily affect the world as inherited by later generations. Ackerman tries to neutralize the "distinctive form of power" that arises from "temporal priority" by insisting on equality of endowments,¹⁰³ but he does so by running roughshod over the prerogative of later generations to make their own determinations about their own preferences. Only by dictating to later generations exactly what it is that they want from a liberal state that gives them "undominated equality" can Ackerman claim to reconcile intergenerational duties with liberalism.

¹⁰² Fishkin, note 91, at 62, 71-73.

¹⁰³ Ackerman, note 92, at 221.

Next, consider the problem of reconciling the requirements of equitable distribution of wealth across generations with equitable distribution of wealth within generations. The reference point here is John Rawls, who presents a robust conception of intergenerational obligations.¹⁰⁴ As applied to generations over time, Rawls's difference principle requires improvement in the "long-term prospects of the least favored extending over future generations."¹⁰⁵ This implies that "[e]ach generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, . . . but it must also put aside in each period of time a suitable amount of real capital accumulation."¹⁰⁶ This saving must continue until just institutions are established; at that point, no new intergenerational saving is required, and "a society meets its duty of justice by maintaining just institutions and preserving their material base."¹⁰⁷

In other words, for Rawls (unlike for Ackerman), intergenerational justice requires actual saving for the benefit of future generations. The specific rate—or, more precisely, rates—of such savings would, of course, be determined in the original position.¹⁰⁸ Rawls contemplates that the savings rates will be dependent on the state of society at various stages.¹⁰⁹ Although "the persons in the original position are to ask themselves how much they would be willing to save at each stage of advance on the assumption that all other generations are to save at the same rates," the poorer (presumably earlier) generations will be saving at lower rates and the wealthier (presumably later) generations

¹⁰⁴ John Rawls, *A Theory of Justice* 284-93 (1971) [hereinafter *Theory of Justice*]; see also John Rawls, *Political Liberalism* 274 (1993) (revising his earlier account of intergenerational justice).

¹⁰⁵ Rawls, *Theory of Justice*, note 104, at 285.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 287.

¹⁰⁸ *Id.* Ackerman argues that Rawls' own conclusion here—that a choice made in the original position would yield a positive rate of saving—is inconsistent with the maximin approach that runs throughout *A Theory of Justice*. Specifically, Ackerman argues that the "just savings" principle would necessarily lead to lower well-being of the worst off in the earliest generations. Ackerman, note 92, at 223-25. Ackerman's objection assumes that any positive rate of saving as between an early generation and a later generation must reduce the well-being of every member of the early generation, including the least well-off. This is by no means necessary, however. A society that observes the progressive redistribution of wealth on an intragenerational basis could maintain a steady—or even increasing—level of well-being for its least well-off while still making net contributions to capital accumulation that allow for intergenerational transfers consistent with the just savings principle. It does not necessarily follow, then, that those in the original position would choose the equal-endowment principle of Ackerman's trusteeship over Rawls' just savings principle.

¹⁰⁹ Rawls, *Theory of Justice*, note 104, at 287.

will be saving at higher rates.¹¹⁰ Still, this just savings principle would always require a positive rate of savings because, in Rawls' view, intergenerational transfers can be made only from earlier generations to later generations.¹¹¹

But that hardly seems right. Societies can and do transfer wealth from later generations to earlier generations—as the United States has under the Social Security program—by funding payments to earlier generations through the accumulation of debt, whether explicit or implicit, that must be borne by later generations.¹¹² To the extent that a society uses such later-to-earlier intergenerational transfers to improve the position of the least well-off in the earlier generations, it would seem to act consistently with Rawls' difference principle but contrary to his just savings principle. In short, it is not at all clear why just savings could not include a negative rate of savings in order to improve intragenerational justice, and it is not at all clear that, under just savings, concern for the “least favored” must necessarily be viewed as a “long-term” enterprise. Critically, Rawls recognizes that concern for intergenerational justice must be linked to concern for intragenerational justice. He minimizes the conflict between the two, however, conceding only that the former is a “constraint” on the latter.¹¹³

Rawls' efforts to reconcile the just savings principle with the difference principle underscores the inherent tension between intergenerational equity and intragenerational equity. Obviously, a norm of intergenerational equity must provide meaningful guidance on the balancing of deferred consumption of wealth against current consumption of wealth. The tension there is obvious: Resources that are consumed today cannot also be saved for the future, and resources that are set aside for the future cannot also be consumed currently. But that also implies a fundamental tension between intergenerational equity and intragenerational equity. When current generations save or otherwise transfer wealth to future generations, the current generations enhance the well-being of future generations. At the same time, however, current generations limit their own ability to contribute to the well-being of their own members, including those who are least

¹¹⁰ *Id.*

¹¹¹ *Id.* at 291.

¹¹² If later generations default on debt incurred by earlier generations to fund benefits for those earlier generations, one or more generations will bear costs from the default. If the debt is an explicit debt, evidenced (for example) by government bonds, default will cause the generations alive at and after the time of default, to the extent they are creditors, to bear the costs of default and, to the extent they are borrowers, to incur higher costs of borrowing. If the debt is implicit, as it is with Social Security, default will cause the generation or generations that are the obligees of the implicit debt to bear the default.

¹¹³ Rawls, *Theory of Justice*, note 104, at 292.

well-off. Thus, intergenerational obligations potentially interfere with equitable redistribution of wealth among members of current generations.

To the extent they share our normative commitments, members of future generations benefit from equitable redistribution within current generations. Thus, if members of current generations were to engage in no redistribution of wealth in order to transfer every available resource forward, future generations may be less well-off simply by virtue of the inequalities in the society they inherit from current generations. And yet, resources devoted to redistribution of wealth among members of current generations cannot be used for redistribution of wealth among members of future generations. This simply follows from the trade-off between deferred consumption and current consumption. Even if greater intragenerational redistribution by current generations means that future generations inherit a more just society, one cost of that increased redistribution may be greater intragenerational inequities in the future.

Thus, it is not enough for a substantive norm of intergenerational equity to balance deferred consumption of wealth against current consumption of wealth; it also must balance that against the demands of intragenerational equity for current generations and the demands of intragenerational equity for future generations. The goals of preserving resources for our successors and improving the condition of our contemporaries yield potentially inconsistent directives. But any substantive norm of intergenerational equity that fails to take account of how a balance between deferred and current consumption furthers or undermines the separate objective of intragenerational equity will be incomplete.

III. ANALYTIC PROBLEMS IN MEASURING INTERGENERATIONAL EFFECTS

Notwithstanding the normative problems presented by efforts to evaluate the intergenerational equity of government fiscal policy, legislators and other policymakers contemplating possible changes to fiscal policy (such as Social Security reform) may want to understand the intergenerational effects of their policy options.¹¹⁴ This inquiry—measurement of the intergenerational effects of government fiscal policy—can be separated from the normative inquiry concerning whether the measured effects are fair. That is, one can attempt to quantify how much wealth is transferred among past, current, and fu-

¹¹⁴ See, e.g., U.S. Treasury Dep't, Social Security Reform: The Nature of the Problem 12-13 (2007), available at <http://www.treas.gov/press/releases/reports/post.pdf>.

ture generations (for example, under the Social Security program) even if it excludes other relevant aspects of government policy and nongovernment activity. This Part takes up the problems presented in trying to measure the intergenerational effects of government fiscal policy.

A. *Deficit, Fiscal Gap, and Generational Accounting*

In recent years, public finance theory has developed quantitative models for determining the intergenerational effects of government fiscal policy; the most prominent are fiscal gap and generational accounting. These models respond in part to the inadequacies of conventional deficit accounting. Critics argue that the federal budget deficit does not provide reliable information about the actual costs of government.¹¹⁵ As a measure of cash flow driven in large part by the labels attached to otherwise similar receipts and payments, these critics see the deficit as inherently manipulable. For example, if the government takes \$100 from *A* in Year 1 and pays \$105 to *A* in Year 2, the effects on the federal budget deficit for Year 1 and Year 2 differ significantly depending on the labels that the government attaches to the transactions.¹¹⁶ The government could label the \$100 receipt in Year 1 as a “tax” and the \$105 outlay in Year 2 as a “benefit,” or it could label the \$100 receipt as “borrowing” and the \$105 outlay as a “repayment with interest.” Under the tax-and-benefit label, the Year 1 budget deficit is reduced by \$100, and the Year 2 deficit is increased by \$105; under the borrowing-and-repayment label, the Year 1 deficit is unchanged; the Year 2 deficit is increased by \$5. The deficit effects of the different labels are significant even though the underlying transaction is economically the same in both cases.¹¹⁷

The arbitrariness is more pronounced if the receipt from *A* and the outlay to *A* are separated by a period longer than the government’s budget window.¹¹⁸ If the government takes \$100 as a tax from *A* in Year 1 and, at the same time, undertakes to pay \$265 as a benefit to *A* in Year 20, deficit accounting will for many years reflect only a \$100

¹¹⁵ Auerbach et al., note 67, at 56-57; see also Howell E. Jackson, *Accounting for Social Security and Its Reform*, 41 Harv. J. Legis. 59 (2004) (arguing “[a]ccrual accounting . . . would provide a clearer picture of the true state of the Social Security system’s current financial shortfall”); Kotlikoff, note 53, at 18-20.

¹¹⁶ Auerbach et al., note 67, at 56; Kotlikoff, note 53, at 18.

¹¹⁷ Auerbach et al., note 67, at 57; see Kotlikoff, note 53, at 19.

¹¹⁸ Alan J. Auerbach, William G. Gale, Peter R. Orszag & Samara R. Potter, *Budget Blues: The Fiscal Outlook and Options for Reform*, in *Agenda for the Nation 110* (Henry J. Aaron, James M. Lindsay & Pietro S. Nivola eds., 2003) (official budget projections use a ten-year window, which does not include all the fiscal effects attributable to baby boomers.)

decrease in the Year 1 deficit because the reported deficit will not reflect the promise to pay a \$265 benefit to *A* in Year 20 until well into the future. Of course, if the obligation to pay a \$265 benefit in Year 20 were discounted to Year 1 at an appropriate interest rate (here, 5%), the \$100 receipt in Year 1 would be offset in full by the \$100 present value of the benefit obligation payable in Year 20. In that case, the transaction would have no effect on the deficit.¹¹⁹

Additionally, deficit accounting fails to identify the intergenerational effects of fiscal policy.¹²⁰ To see this, assume that the government pays a \$100 benefit to *A*, a retiree, in Year 1 and that *A*'s benefit is financed by a \$100 tax on *B*, a middle-aged worker, in Year 1. Assume also that the government promises to pay *B* a benefit of \$265 once *B* has retired in year 20 and that *B*'s benefit will be financed by a \$265 tax on *C* in Year 20, when *C* is middle-aged. Deficit accounting records no change in the federal budget deficit in Year 1 or in Year 20 attributable to the taxes on *B* and *C* and the benefits to *A* and *B*. In Year 1, the government's revenue from *B*'s tax exactly matches the government expenditure on *A*'s benefit, and so also with *C*'s tax and *B*'s benefit in Year 20.¹²¹ Deficit accounting thus not only misses the deferred benefit obligation incurred by the government; it also misses the basic point that this policy has made transfers from *B* to *A* and from *C* to *B*. Because *A*, *B*, and *C* are, by hypothesis, members of different generations, the fact and extent of the transfers presumably are important to policymakers. The point would be all the more significant if the benefits paid to the earlier generations (*A* and *B*) exceeded the value of the taxes they have paid—precisely the effect, for example, of Social Security. Under deficit accounting, however, that redistribution fails even to register as an element of fiscal policy.

In response to these and other shortcomings of deficit accounting, public finance economists have developed other measures of government fiscal policy—most notably, fiscal gap accounting and generational accounting. Both fiscal gap and generational accounting begin with the government's intertemporal budget constraint—the premise that, ultimately, aggregate government spending cannot exceed the sum of net government assets and aggregate government revenues;¹²²

¹¹⁹ See Kotlikoff, note 53, at 143-49; David M. Cutler, Book Review of *Generational Accounting*, 46 *Nat'l Tax J.* 61, 62-63 (1993).

¹²⁰ Auerbach et al., note 67, at 56-57; Shaviro, *Reckless Disregard*, note 74, at 1290; see also Congressional Budget Office, *Who Pays and When? An Assessment of Generational Accounting* 2-3 (1995), available at <http://www.cbo.gov/ftpdocs/0xx/doc18/Genacct.pdf>.

¹²¹ See generally Auerbach et al., note 67, at 57.

¹²² Alan J. Auerbach & Laurence J. Kotlikoff, *The Methodology of Generational Accounting*, in *Generational Accounting Around the World* 31 (Alan J. Auerbach, Laurence J. Kotlikoff & Willi Leibfritz eds., 1999); Jagadeesh Gokhale & Kent Smetters, *Fiscal and Generational Imbalances: New Budget Measures for New Budget Priorities* 7 (2003) (stat-

and both fiscal gap and generational accounting posit, counterfactually, the indefinite continuation of current fiscal policy.¹²³ Fiscal gap accounting adds the present value of projected government receipts to the current value of government assets and subtracts that sum from the present value of projected government spending.¹²⁴ In contrast to deficit accounting, which measures the government's annual cash flow, fiscal gap accounting measures the unfunded cost of future government spending. Thus, the "fiscal gap" is the amount, expressed as a present value, that government would have to add to its existing assets and its future revenues to pay in full for its projected spending if current fiscal policy were to remain unchanged.¹²⁵ Recent calculations put the fiscal gap at somewhere between \$44 trillion and \$85.5 trillion.¹²⁶ The fiscal gap for the Social Security program alone has been estimated at \$7 trillion.¹²⁷

The fiscal gap includes revenues and expenditures attributable to current, past, and future generations.¹²⁸ By subtracting from government spending attributable to current and past generations the sum of future government revenues attributable to those generations and the value of current government assets, one can determine how much of the unfunded cost of government is shifted from current and past generations to future generations.¹²⁹ Recent calculations put this net cost imposed on future generations just for Social Security at approximately \$8.8 trillion.¹³⁰

ing that the government's "current (net) debt held by the public plus the government's future non-interest spending must be balanced over time by its future receipts").

¹²³ See Alan J. Auerbach, Jagadeesh Gokhale & Laurence J. Kotlikoff, *Using Generational Accounting to Assess Fiscal Sustainability and Generational Equity*, in *Distributional Analysis of Tax Policy* 183-84 (David F. Bradford ed., 1995); Gokhale & Smetters, note 122, at 7-9.

¹²⁴ Gokhale & Smetters, note 122, at 8.

¹²⁵ *Id.* at 3. Alternatively, some define the fiscal gap as the present value of the amount needed to prevent the ratio of government debt to gross domestic product from increasing over a specified measuring period. See, e.g., Auerbach et al., note 118, at 123; U.S. Gov't Accountability Office, *The Nation's Long-Term Fiscal Outlook* 5 (2006), available at <http://www.gao.gov/new.items/d061077r.pdf>.

¹²⁶ See Gokhale & Smetters, note 122, at 2, 25-27 (calculating the fiscal gap at \$44.2 trillion as of 2002); U.S. Gov't Accountability Office, note 125, at 5 (calculating the fiscal gap, under a "realistic simulation," at \$61 trillion as of 2006); Daniel N. Shavero, *Taxes, Spending, and the U.S. Government's March Toward Bankruptcy* 43 (2007) (indicating fiscal gap as high as \$85.5 trillion).

¹²⁷ Gokhale & Smetters, note 122, at 25-28 (calculated as of 2002).

¹²⁸ *Id.* at 8.

¹²⁹ *Id.* at 11.

¹³⁰ *Id.* at 25-28 (calculated as of 2002). This \$8.8 trillion value is higher than the overall fiscal gap of \$7 trillion for the Social Security program because future generations are projected to pay into the program an amount that exceeds what they receive from the program by about \$1.7 trillion. *Id.* at 28.

Generational accounting provides a second method for measuring how fiscal policy distributes the costs of government among different generations. The government adopted it briefly in the early 1990's as a supplement to deficit accounting,¹³¹ and it has been used by multilateral development agencies such as the World Bank and the International Monetary Fund.¹³² Generational accounting first separates current and past generations into birth cohorts up through children born in the year of the calculation.¹³³ It then determines the lifetime net taxes paid and expected to be paid by each birth cohort on the assumption that current fiscal policy continues indefinitely.¹³⁴ For this purpose, "net taxes" comprise income taxes, payroll taxes, property taxes, and excise taxes paid to federal, state, and local governments less government transfer payments made in cash and certain cash equivalents (such as Social Security benefits, Medicare and Medicaid benefits, food stamps, and unemployment insurance).¹³⁵ These lifetime net taxes are expressed, relative to lifetime income, as a net tax rate. Then, proceeding from the premise of the government's intertemporal budget constraint, generational accounting allocates to all future generations the costs of government not paid for by current and past generations.¹³⁶ This total residual cost of government also is expressed as a lifetime net tax rate for future generations.¹³⁷

In short, generational accounting shows both how fiscal policy has treated past generations relative to current generations and how the continuation or modification of current fiscal policy would treat future generations relative to the youngest members of current generations. Recent calculations put the lifetime net tax rate of newborns at 22.8% and the lifetime net tax rate of future generations at 32.3%.¹³⁸ In the language of generational accounting, this reveals a "generational im-

¹³¹ Office of Management and Budget, Budget of the United States Government, Fiscal Year 1995: Analytical Perspectives 21-31 (1994); Office of Management and Budget, Budget Baselines, Historical Data, and Alternatives for the Future 531-40 app. One(F) (1993); Office of Management and Budget, Budget of the United States Government, Fiscal Year 1993, at 3-7 to 3-13 (1992).

¹³² Auerbach & Kotlikoff, note 122, at 1.

¹³³ Laurence J. Kotlikoff, *Generational Policy* 53 (2003); Auerbach et al., note 67, at 59-60.

¹³⁴ Kotlikoff, note 133, at 53.

¹³⁵ Auerbach et al., note 67, at 59; Congressional Budget Office, note 120, at 9.

¹³⁶ Auerbach & Kotlikoff, note 122, at 33. Generational accounting generally assumes that the residual unfunded cost of government is allocated equally across all future generations (after allowing for an adjustment for "real productivity growth"). Auerbach et al., note 67, at 61-62.

¹³⁷ Auerbach & Kotlikoff, note 122, at 33.

¹³⁸ Kotlikoff, note 133, at 67. These calculations do not take into account legislation enacted since 2000. *Id.* at 67-68.

balance” in government fiscal policy.¹³⁹ Specific application of generational accounting to Social Security demonstrates that the program imposes a net tax on participants born between World War II and the end of the 20th century.¹⁴⁰ For these participants, total employment taxes paid into the program exceed total benefits payable from the program by approximately 5% of lifetime earnings.¹⁴¹ This net fiscal burden is considerable: It represents roughly one-sixth to one-seventh of the lifetime net tax rate for these participants when calculated for all aspects of government fiscal policy.¹⁴² Similarly, generational accounting indicates that many legislative reforms aimed at Social Security solvency generally would increase lifetime fiscal burdens both for future generations and for younger members of current generations.¹⁴³

B. Limitations of Fiscal Gap and Generational Accounting

Both fiscal gap and generational accounting constitute improvements over deficit accounting in understanding the intergenerational effects of government fiscal policy. Their strength lies in their capacity to project current policy forward and determine, within the parameters of their assumptions, which generations have borne or will bear many of the cash costs of government. That, in turn, tells us whether the costs that will be borne by future generations are manageable in light of their anticipated incomes and, relatedly, whether the cash-flow implications of current fiscal policy will likely be sustainable over the long term. Fiscal gap and generational accounting thus predict whether—and, in rough terms, when—we will have to modify fiscal policy to meet the cash needs of the federal government.

The architects of fiscal gap and generational accounting argue that these measures therefore should replace deficit accounting as the preferred standard for assessing fiscal policy.¹⁴⁴ More pointedly, they argue that government fiscal policy should ignore the federal budget deficit and instead should aim to achieve both “fiscal balance”—the

¹³⁹ Id. at 58-59; Jagadeesh Gokhale, Benjamin R. Page & John R. Sturrock, *Generational Accounts for the United States: An Update*, in *Generational Accounting Around the World*, note 122, at 491, 498.

¹⁴⁰ Caldwell et al., note 44, at 130-34.

¹⁴¹ Id. at 130.

¹⁴² Auerbach et al., note 123, at 200 (showing lifetime net tax rates for post-War generations).

¹⁴³ Caldwell et al., note 44, at 134-39; Alan J. Auerbach, Jagadeesh Gokhale & Laurence J. Kotlikoff, *Social Security and Medicare Policy from the Perspective of Generational Accounting* 9 (NBER Working Paper No. 3915, 1991), available at http://www.nber.org/papers/w3915.pdf?new_window=1.

¹⁴⁴ Gokhale & Smetters, note 122, at 1-2; Kotlikoff, note 53, at 217-18.

elimination of any fiscal gap—and “generational balance”—the elimination of any shift in the cost of government from current generations to future generations.¹⁴⁵ This proposed redefinition of the end of fiscal policy can be set forth in a weak version or a strong version. The weak version is predictive. It argues that, given the stubborn fact of the government’s intertemporal budget constraint, the existence of a fiscal or generational imbalance demonstrates that current fiscal policy is unsustainable and that government cannot avoid changing its fiscal policy in some manner at some point.¹⁴⁶ The weak version predicts that government policy will change, but it does not predict when or how it will change. The strong version, by contrast, is normative. It argues not only that government fiscal policy will change but that it should change because of the otherwise inequitable outcomes for future generations.¹⁴⁷ Quite apart from the notion that changing those outcomes is inevitable, the strong version argues that changing those outcomes is right.

The strong version of the claim, however, is misplaced. Although they provide interesting analytic information, fiscal gap and generational accounting do not move us closer to answering the question whether current fiscal policy or any specific reform to current fiscal policy is fair to current and future generations. First, neither fiscal gap nor generational accounting addresses the normative problems, discussed in Part II, that any account of intergenerational equity must address. For example, both restrict their analysis to the frame of government fiscal policy and thereby ignore all other intergenerational transfers made through other aspects of government policy and through nongovernment activities.

Second, both fiscal gap and generational accounting treat the benefits and burdens of government fiscal policy asymmetrically. Proponents and critics have noted that these measures do not account for all the benefits of government spending, including government spending to purchase goods and services and government spending that results in public goods.¹⁴⁸ In other words, many of the benefits produced by

¹⁴⁵ Gokhale & Smetters, note 122, at 2; Kotlikoff, note 53, at 218-19.

¹⁴⁶ Gokhale & Smetters, note 122, at 2; Kotlikoff, note 133, at 67-69; Gokhale et al., note 139, at 490.

¹⁴⁷ Kotlikoff, note 53, at 219-20; Alan J. Auerbach, Jagadeesh Gokhale & Laurence J. Kotlikoff, *Generational Accounting: A Meaningful Way to Evaluate Fiscal Policy*, 8 J. Econ. Persp. 73, 82, 84-85 (Winter, 1994). But see Laurence J. Kotlikoff, Reply to Diamond’s and Cutler’s Reviews of *Generational Accounting*, 50 Nat’l Tax J. 303, 308 (1997) (“[N]either I nor my colleagues have suggested that generational balance is a *sine qua non* for generational equity.”).

¹⁴⁸ Neil H. Buchanan, *Social Security, Generational Justice, and Long-Term Deficits*, 58 Tax L. Rev. 275, 311-12 (2005); Willem H. Buiter, *Generational Accounts, Aggregate Saving and Intergenerational Distribution*, 64 *Economica* 605, 606 (1997); Gokhale & Smet-

fiscal policy are not attributed by fiscal gap or generational accounting to any generation—past, present, or future. Thus, the benefits of political liberties and civil rights, national defense against foreign enemies, a functioning system of justice, maintaining constitutional order, and many similar goods provided by government are simply disregarded in comparing the intergenerational distribution of fiscal policy benefits and burdens.¹⁴⁹ This treatment is inconsistent with the treatment of the cost of government spending to produce those benefits: Both fiscal gap and generational accounting attribute the burden of providing these benefits to those paying the taxes that finance them, but the benefits are attributed to no one.

Fiscal gap and generational accounting do not account for these benefits because they cannot account for them.¹⁵⁰ Any attempt to determine the value of these benefits would be arbitrary. One might consider using the cost to government of providing the benefits as a first approximation for value, but that method would produce striking anomalies. As Peter Diamond argues, it is important to distinguish distributional calculations based on costs and distributional calculations based on utilities.¹⁵¹ There is little reason to suppose, for example, that individuals value freedom from foreign invasion exactly at the amount spent by government on national defense.¹⁵² Assuming that the value of such benefits could be determined, actual attribution of that value to specific generations would be arbitrary. David Cutler points out that we have no idea how much one particular generation

ters, note 122, at 13; Robert Haveman, *Should Generational Accounts Replace Public Budgets and Deficits?* 8 J. Econ. Persp. 95, 97, 100-01 (Winter, 1994); Shaviro, note 56, at 131; Kotlikoff, note 53, at 168. But see Gokhale et al., note 139, at 498-501 (attempting generational attribution of some, but not all, government purchases). Shaviro, note 126, at 38-39 (arguing that “generational accounting treats taxes and transfers symmetrically”).

¹⁴⁹ See, e.g., Auerbach et al., note 67, at 87-92.

¹⁵⁰ Cutler, note 119, at 66; Gokhale & Smetters, note 122, at 13; Kotlikoff, note 133, at 55; see also Auerbach & Kotlikoff, note 122, at 32 (“With the exception of government expenditures on health care and education, which are treated as transfer payments, [generational] accounts do not impute to particular generations the value of the government’s purchases of goods and services because it is difficult to attribute the benefits of such purchases.”); Congressional Budget Office, note 120, at 45 (“Trying to assign the benefits of most [government] purchases to specific generations . . . is impracticable.”). Buiter notes that “[c]onceptually, there is no special problem in valuing public consumption” but that “[i]n practice, of course, the quantification of welfare consequences of public consumption is likely to be an extremely complicated job.” Buiter, note 148, at 616.

¹⁵¹ Peter Diamond, *Generational Accounts and Generational Balance: An Assessment*, 49 Nat’l Tax J. 597, 599 (1996) (explaining that the “difference between the cost and utility approaches” depends on “how people valued the expenditures” so that “the sum of utilities from the expenditures might be larger or smaller than the aggregate level of expenditures”).

¹⁵² *Id.* at 605 (giving an example regarding the interstate highway system; however, the point is applicable across a broad range of government purchases).

benefits from national defense relative to any other particular generation, even if one faces greater threats to its security than the other.¹⁵³

The asymmetry presents a much more significant limitation on fiscal gap and generational accounting as reference points for intergenerational equity than either proponents or critics have recognized. The failure to account for these benefits not only affects the analysis of the government spending that is obviously devoted to the provision of public goods, such as national defense;¹⁵⁴ it also undermines the analysis of government transfer programs—programs supposedly at the core of fiscal gap and generational accounting. Government transfer payments for Social Security, Medicare, and food stamps provide more than just cash and cash equivalents to the recipients and their family members. They also provide public goods more broadly. Past, current, and future generations derive a substantial benefit of the public-good variety from living in a society that limits poverty among the elderly through the Social Security and Medicare programs. Similarly, members of past, current, and future generations who never have seen and never will see a food stamp or a welfare payment realize a benefit from government programs intended to prevent children from starving in the streets.

These and similar noncash benefits attributable to government fiscal policy are genuine and substantial. They provide individuals who receive no government transfer payments with returns on the taxes that they pay to the government. Such benefits also legitimize political decisions made by individuals as to how great a tax burden they are willing to accept. But fiscal gap and generational accounting treat all these public-good benefits, which simply cannot be collapsed into the cash transfer payments that facilitate them, as though they were provided entirely to the individuals who receive the transfer payments or to no one at all. In other words, even though the project of fiscal gap and generational accounting is to determine how the benefits and burdens of government fiscal policy are distributed across different generations, fiscal gap and generational accounting do not account properly for many of the most important benefits that justify those burdens.

Failing to account fully for the benefits of government fiscal policy and to attribute those benefits to the appropriate generations critically undermines our ability to judge whether government fiscal policy, as measured by fiscal gap and generational accounting, is fair to different

¹⁵³ Cutler, note 119, at 66.

¹⁵⁴ See, e.g., Staff Paper Prepared for the President's Commission to Study Capital Budgeting, *Generational Accounting* (Apr. 21, 1998), available at http://clinton3.nara.gov/pscb/staf_genacc.html; Diamond, note 151, at 605.

generations. Any meaningful norm of intergenerational equity, at a minimum, must account for both burdens and benefits. Consider the absurd results implied by the contrary position, that is, the possibility that we undertake normative judgments about intergenerational equity by considering only burdens but not benefits. Assume, for this limited purpose, that there was a broad agreement that treating different generations equitably required treating each separate generation the same.¹⁵⁵ Now posit a new program under which the government imposes a tax on members of *Generation A* (many of whom are parents of young children) in order to provide universal pre-school care to all members of *Generation B* (all of whom are young children). A normative evaluation of this program that considered only the imposition of burdens would find the policy unfair to *Generation A*. But the emptiness of that conclusion becomes readily apparent when we acknowledge that the beneficiaries of the policy are the members of *Generation A* who are themselves parents of young children. The program may present questions of equity within a single generation because it redistributes wealth from members of *Generation A* who are not parents of young children to members of *Generation A* who are parents of young children. But to label the program unfair or inequitable across generations is to miss the mark by quite a wide margin.

Indeed, pushed toward its limits, the proposition that the intergenerational equity of fiscal policy can be evaluated without accounting fully for the benefits of that policy would lead to conclusions that we generally would reject outright. Consider, for example, the case of a government that imposes large fiscal burdens on future generations by borrowing heavily to finance national defense against an impending foreign invasion.¹⁵⁶ If the intergenerational equity of government fiscal policy were appropriately evaluated, as a normative matter, by considering only the burdens imposed on different generations, one might think the government's decision to borrow excessively during time of war to be intergenerationally inequitable. But that conclusion rightly strikes one as absurd and dangerously wrong. Few could agree that a government policy of devoting all available resources of present and future generations to preserve the nation's security against an invading enemy is unfair to the future generations who otherwise would be born into a state of occupation. Yet that is precisely the implication of making normative judgments about how the costs of financing national defense are distributed among current

¹⁵⁵ This assumption is made solely for convenience of presentation.

¹⁵⁶ See, e.g., Congressional Budget Office, note 120, at 25, 45. Consider, for example, the debts incurred by Great Britain during World War II. See, e.g., Sean Glynn & Alan Booth, *Modern Britain: An Economic and Social History* 154-55 (1996).

and future generations, without also accounting for how the benefits of that spending are distributed.

This shortcoming prevents fiscal gap and generational accounting from serving as a basis for normative judgments about the past or future intergenerational effects both of government fiscal policy generally and of specific tax-and-transfer programs. As shown in Part II, the Social Security program has redistributed approximately \$13 trillion in cash from program participants born after 1937 to program participants born before 1938.¹⁵⁷ But any effort to make normative assessments about the intergenerational equity of the program breaks down once we recognize that these numbers fail to account fully for the program's benefits. We can label the participants born after 1937 as net losers under the program based on the \$13 trillion transfer, but we cannot know whether we should still regard them as net losers if the noncash benefits that they receive from Social Security were taken into account. Most of those born after 1937 derive a genuine benefit from the existence of a government program that provides cash support to the elderly and disabled, and many would be willing to pay taxes into the program even if they understood that they will receive less than they contribute. Certainly the analyses of fiscal gap and generational accounting reveal useful and interesting information about Social Security, but they do not provide us enough information about its intergenerational effects to make normative judgments.¹⁵⁸

C. Additional Problems with Fiscal Gap and Generational Accounting

Fiscal gap and generational accounting also present other difficulties. Both rely on projections not only of future government behavior but also of future economic conditions, and those projections will likely prove incorrect. Both treat all future generations as an undifferentiated group—so that those born next year are not distinguished from those born many years in the future. Both make assumptions about how the benefits and burdens of government policy should be attributed to current and future generations.¹⁵⁹

¹⁵⁷ See note 38.

¹⁵⁸ These objections are also generally relevant to attempts to measure the intragenerational equity of government fiscal policy. See Murphy & Nagel, note 85, at 3-39; see also Michael J. Graetz, Legal Transitions: The Case of Retroactivity in Income Tax Revision, 126 U. Pa. L. Rev. 47, 81-82 n.106 (1977) ("[I]t is impossible to evaluate income tax changes in terms of vertical equity without looking at the overall effects of governmental action on the distribution of income.").

¹⁵⁹ Except for the nondifferentiation point, these problems are generally familiar from evaluating the intragenerational effects of government fiscal policy. See generally, Graetz, note 61.

1. *Uncertainty of Assumptions*

As critics of fiscal gap and generational accounting have noted, any effort to quantify the intergenerational effects of current or reformed fiscal policy necessarily requires assumptions about future conditions—including economic growth, interest rates, risk premia, population growth, mortality rates, incomes, and the costs of specific goods and services relative to those of other specific goods and services.¹⁶⁰ For example, calculating the fiscal gap attributable to Social Security depends critically on assumptions about a wide array of economic data, and variations in those data can alter the analysis significantly. Assumptions, of course, can prove right or wrong.

The possibility of error in the assumptions needed to calculate the fiscal gap and generational accounts is much more significant than it is for deficit accounting because of the longer time frame. Deficit accounting typically looks forward over a five- or ten-year period, while fiscal gap and generational accounting typically look forward over a seventy-five-year period or even the infinite future. The longer horizon makes assumptions about future economic conditions inherently more speculative. For example, determining the size of the unfunded liability for Medicare benefits over a seventy-five-year period requires assumptions about the cost of health care over the next 75 years. The longer horizon also magnifies the effect of erroneous assumptions: The present value of an obligation to pay a \$10,000 Social Security benefit seventy-five years from now is just under \$1100 if discounted at an interest rate of 3%, but the present value of that same obligation is just over \$525 if discounted at 4%.

Still, the problem of uncertain assumptions does not undermine the central project of fiscal gap and generational accounting. Any attempt to quantify the future effects of government fiscal policy necessarily makes assumptions about future states of the world; the question is not whether the assumptions ultimately prove correct but whether they incorporate the best available information and follow appropriate methodologies.¹⁶¹ Although the uncertainty of the assumptions suggests a corresponding uncertainty of the results, it does not imply that the results are meaningless.

¹⁶⁰ Dean Baker, *Robbing the Cradle? A Critical Assessment of Generational Accounting* 16-19 (1995); Buchanan, note 148, at 313-14; Congressional Budget Office, note 120, at 29-32; Diamond, note 151, at 602-03; Goode & Steuerle, note 56, at 1030-31; Haveman, note 148, at 101-04.

¹⁶¹ Sensitivity analyses generally indicate that varying the relevant assumptions within reasonable parameters alters the magnitude, but not the existence, of fiscal gap and generational imbalances. Gokhale & Smetters, note 122, at 35-41; Kotlikoff, note 133, at 67.

2. *Nondifferentiation of Future Generations*

Both fiscal gap and generational accounting begin with the government's intertemporal budget constraint and calculate as a residuum the unpaid cost of government that will be borne by all future generations. Thus, both measures determine a net cost imposed on future generations as a whole rather than on particular future generations separately. Fiscal gap accounting simply measures the total unfunded cost of government as a single net burden for the future. Although generational accounting does measure lifetime tax rates for members of current and past generations, it does not make a similar measurement, for example, with respect to the cohort born ten years from now or 100 years from now.¹⁶² Therefore, as both critics and defenders of fiscal gap and generational accounting have noted, these measures tell us how government fiscal policy has treated separate generations up through the one born today, but they do not tell us how government fiscal policy will treat any specific future generation relative to any other specific future generation or relative to any specific current or past generation.¹⁶³

3. *Incidence of Fiscal Benefits and Burdens*

Even where fiscal gap and generational accounting do make distinctions among generations, there are reasons to question how they attribute the benefits and burdens of fiscal policy. Perhaps of necessity, these measures make simplifying assumptions about the incidence of taxation. For example, individual income taxes generally are considered to be borne by the individual paying the tax, and taxes on capital income generally are attributed to the owners of capital.¹⁶⁴

No less importantly, both fiscal gap and generational accounting flatly assume that there is no "sliding" of government benefits among family members.¹⁶⁵ When government makes a transfer payment to an individual, fiscal gap and generational accounting treat the nominal

¹⁶² Gokhale et al., note 139, at 493-98.

¹⁶³ Diamond, note 151, at 603-04; Gokhale & Smetters, note 122, at 11; Haveman, note 148, at 97, 100; Kotlikoff, note 133, at 55-56.

¹⁶⁴ Auerbach & Kotlikoff, note 122, at 34; Congressional Budget Office, note 7, at 37-38; Haveman, note 148, at 98-99, 104-06; Kotlikoff, note 133, at 60. The proponents of generational accounting concede that, although it "attempts to understand the generational *incidence* . . . of fiscal policy changes," the measure "incorporates a set of incidence assumptions that will not, in general, capture the full range of either microeconomic or macroeconomic responses to policy changes" and "should be viewed as a method of approximating the policy-induced welfare changes experienced by different generations." *Generational Accounting Around the World*, note 122, at 4.

¹⁶⁵ Gokhale & Smetters, note 122, at 11, 53-54; Kotlikoff, note 133, at 61; Congressional Budget Office, note 120, at 37-38; Haveman, note 148, at 104-06; Office of Management and Budget, note 131, at 23.

recipient of the payment as the only beneficiary. This effectively assumes, for example, that the adult children of Social Security recipients derive no economic benefit from the fact that their elderly parents receive income support from the government and that parents of young children derive no economic benefit from the fact that their children receive publicly financed education.

To appreciate the problems this causes, assume that the government introduced a program to pay full post-secondary education costs for anyone under the age of twenty-five. In the absence of this program, many parents of individuals under the age of twenty-five pay for all or part of those costs; this implies that, at least initially, parents would capture part or all of the benefits of the program. But fiscal gap and generational accounting would consider individuals under the age of twenty-five to be the sole recipients of the program benefits—resulting in a miscalculation of the generational effects of the program. Assume further that, over time, some families respond to the existence of the program by increasing their support of older family members. Thus, because *Mother* no longer pays the college costs of *Son*, she increases the amounts she pays to support *Grandmother*. At this point, part of the cost of repealing the program would be borne by *Mother* and part by *Grandmother*, but fiscal gap and generational accounting would show the full burden of repeal as falling on *Son*.¹⁶⁶ The assumption that the benefits of the program do not slide between family members can result in misattribution.

The architects of fiscal gap and generational accounting defend the assumption that benefits do not slide by attacking the position—generally referred to as “Ricardian equivalence”—that individual saving and dissaving respond directly to changes in government fiscal policy and, in fact, offset the effects of government fiscal policy.¹⁶⁷ Even if full Ricardian equivalence is implausible, it does not follow that there is no sliding at all.¹⁶⁸ Plainly, many adults would take their elderly

¹⁶⁶ Of course, if *Mother* responded to the program simply by increasing her bequest to *Son* by an amount equal to what she otherwise would have paid for his post-secondary education, *Son* would capture the full benefit of the program and would bear the full cost of its repeal.

¹⁶⁷ See Robert J. Barro, Are Government Bonds Net Wealth?, 82 J. Pol. Econ. 1095, 1116 (November/December, 1974); see also Leimer I, note 32, at 43-44; Shaviro, Reckless Disregard, note 74, at 1288.

¹⁶⁸ See Robert J. Lampman & Timothy M. Smeeding, Interfamily Transfers as Alternatives to Government Transfers to Persons, 29 Rev. of Income & Wealth 45, 47-54 (1983), available at <http://www.roiw.org/1983/45.pdf>; see also Jane G. Gravelle, Methodological Issues of Generational Accounting, in *Distributional Analysis of Tax Policy* 208 (David F. Bradford ed., 1995) (“Truth presumably lies somewhere between no transfers and Ricardian equivalence.”). But see Li Gan, Guan Gong & Michael Hurd, Net Intergenerational Transfers from an Increase in Social Security Benefits (The Levy Econ. Inst. of Bard C. Working Paper No. 482, 2006), available at http://www.levy.org/pubs/wp_482.pdf.

parents into their homes or otherwise provide for them in the absence of government-provided support such as Social Security and Medicare, and, plainly, many parents of young children would finance their children's education in the absence of publicly financed education.¹⁶⁹ To attribute every dollar of every government transfer payment only to the nominal recipient of that payment is to ignore the important relationships existing among family members of different generations that imply commitments of support. Fiscal gap and generational accounting improperly assume a false dichotomy: Either there must be full Ricardian equivalence, or there is no intergenerational sliding at all. To the extent that fiscal policy benefits slide in part, the actual incidence of those benefits is more nuanced and obscure than fiscal gap and generational accounting assume.

IV. POLITICAL APPROACHES TO INTERGENERATIONAL EQUITY

The skeptical case developed thus far offers little to policymakers whose responsibilities include decisions that have intergenerational effects. Consider the question of Social Security reform. A conscientious lawmaker may regard the long-term insolvency of the program to be a pressing policy matter; she may understand that the program has redistributed substantial wealth from current and future generations to past generations; and she may express concern that any reform aimed at restoring long-term solvency not place inequitable burdens on future generations. But the discussion in Parts II and III above provides no real guidance to this conscientious lawmaker. To advise her that there is no sound method for measuring all the relevant intergenerational effects of the program or any program reform and that, even if there were a way of measuring those effects, there is no meaningful normative framework for evaluating them is to imply that she might as well ignore concerns about intergenerational equity entirely. Before concluding that questions of intergenerational equity cannot be addressed within fiscal policy reform, however, it is necessary to consider whether those questions might be resolved satisfacto-

¹⁶⁹ Steuerle and Bakija argue that Social Security benefits "may . . . be viewed as replacing transfers that workers would have made otherwise to their retired parents" and that, correspondingly, "[t]he smaller lifetime private transfers these workers receive from their children might be viewed as an offset to large public transfers given to them." Steuerle & Bakija, note 7, at 131 n.32; see also Congressional Budget Office, note 120, at 39 (discussing uncertainties regarding "how or how much transfers slide"); Achenbaum, note 4, at 53 (describing benefits conferred on children of earliest program participants through relief from family support obligations). As Haveman puts it: "On what basis can one presume that health care benefits—or retirement pensions—assigned to the elderly represent net benefits to them, as opposed to their adult children on whom the burden could have fallen were not the public program in place?" Haveman, note 148, at 105.

rily through political processes. There is reason for guarded optimism here, including the fact that politics serves as the vehicle for resolving other difficult normative questions presented by government policy.

A. Politics as a Proxy for Substantive Equity

Arguably, we can pursue intergenerational equity in fiscal policy reform even if we cannot adequately measure intergenerational effects and even if we lack a normative framework for evaluating those effects. Consider, for comparative purposes, how we address questions of intragenerational equity in fiscal policy. Public finance theory does not provide perfect measures of how government fiscal policy transfers resources among different groups of current generations;¹⁷⁰ and, certainly, there are sharply different views about what constitutes a just, equitable, or fair distribution of wealth among those groups. Few would argue, however, that government cannot or should not pursue intragenerational equity through its fiscal policy. Our political discourse generally recognizes as relevant and meaningful the claims made about the desirability or undesirability of government redistribution through tax and transfer programs; we consider it reasonable and well within the bounds of normal political debate to argue that fairness and equity demand more or less redistribution than current government policy effects.

Importantly, our notions of intragenerational equity do not have a formal role in government policymaking. Although we may praise or criticize particular government policies from the standpoint of intragenerational equity, no specific measure of intragenerational distributional effects is considered controlling, and no specific normative framework of intragenerational equity has anything approaching official status. In other words, the intragenerational equity or inequity of a particular policy decision does not provide a basis for the legal validation or invalidation of the policy decision. One individual may believe strongly that the intragenerational distributive effects of a particular policy are fundamentally unjust, and another individual may strongly believe otherwise. They have a basis for reasoned disagreement, but neither can invoke any formal mechanism of the legislative or judicial process to overturn or confirm the policy decision on the ground that it reaches an intragenerationally inequitable or equitable result.

The reason, of course, is that we do not accord actual legal significance to any substantive conception of intragenerational equity. Instead, we treat politics as a proxy for intragenerational equity, and we

¹⁷⁰ For a general discussion, see *Distributional Analysis of Tax Policy*, note 168.

insist on fairness of political processes rather than fairness of substantive outcomes. As long as everyone with a stake in the outcome has an opportunity to engage in the processes of government—as Daryl Levinson puts it, “[a]s long as a group can compete on roughly fair terms in the pluralist political marketplace”¹⁷¹—we treat the policy decisions made through those processes as valid and binding, whether or not everyone would agree that the outcomes are equitable as a substantive matter.

But that points up an obvious and important limitation to the comparison of intergenerational equity and intragenerational equity. Future generations cannot participate in the political processes through which policy decisions are made in the present that likely will affect their interests.¹⁷² On the question of Social Security reform, for example, policy options that would restore long-term program solvency would involve the distribution of a cash burden equal to several trillion dollars over current generations, future generations, or both. Current generations could undertake program reform immediately and, at one extreme, could bear the entire cash burden of solvency themselves or, at the other extreme, transfer the entire cash burden of solvency to future generations. In either case, the policy decision affects the interests of future generations, but those future generations are unable to participate in the political processes through which the decision is made. This mirrors the early history of the Social Security program, when the participants born before the Second World War voted generous windfall benefits for themselves that would be paid for by participants who were either not yet born or simply too young to participate in the political process at the relevant moments.

The model that serves intragenerational considerations well—treating the outcome of normal political processes as a proxy for substantive fairness—breaks down, then, when intergenerational considerations are at stake. Future generations cannot “compete on roughly fair terms” in the give-and-take of political decisionmaking; indeed, they cannot compete at all. Because of this nonrepresentation problem, there might appear to be no reason to treat the results of political processes as good proxies for substantive fairness. If politics is to provide a meaningful substitute for a robust understanding of

¹⁷¹ Levinson, note 2, at 1351.

¹⁷² This point often is made in the context of political decisionmaking on matters having intergenerational effects. See, e.g., Cowen, note 68, at 6; Eric A. Posner, *Agencies Should Ignore Distant-Future Generations*, 74 U. Chi. L. Rev. 139, 141 (2007) (“Congress and the president will support policies that benefit nonvoting future generations only to the extent that they are supported by voting members of the current generation.”); Congressional Budget Office, note 120, at 1.

intergenerational equity, perhaps more than ordinary political processes will be needed.

B. Potential Approaches to the Nonrepresentation Problem

The fact that the interests of future generations are affected by decisions in fiscal policy and other aspects of government policy is unavoidable; the fact that future generations cannot participate directly in those decisions is unalterable. Familiar mechanisms for addressing representational problems—such as redrawing the boundaries of legislative districts¹⁷³—obviously provide no solution. Arguably, however, refinements of the political processes through which government policy is made could mitigate the nonrepresentation problem by improving the capacity of current generations to take the interests of future generations into account.

James Fishkin has proposed the idea of a deliberative opinion poll as a means for improving the quality of political decisionmaking.¹⁷⁴ Fishkin contrasts the deliberative opinion poll with the familiar opinion poll: “An ordinary poll models what the electorate thinks, given how little it knows. A deliberative opinion poll models what the electorate *would* think if, hypothetically, it could be immersed in intensive deliberative processes.”¹⁷⁵ The underlying notion is that political decisionmaking following deliberative debate among citizens provides superior outcomes—superior in the sense of better reflecting the public interest as a whole—than ordinary, fragmented, majoritarian political decisionmaking. The deliberative opinion poll is a prescriptive method for determining what the body politic as a whole would decide on an issue if it were feasible for the body politic to engage in the kind of thoughtful deliberative processes that are practicable only in small settings.¹⁷⁶

Fishkin has thought seriously and deeply about the problem of intergenerational equity, but he does not offer the idea of the deliberative opinion poll in that context. Still, if his central claim about deliberative democracy is correct—if deliberative debate does improve the quality of political decisionmaking—it would seem reasonable to extend the idea specifically to policy questions that pose hard issues about the treatment of future generations. At a minimum, the

¹⁷³ See *Baker v. Carr*, 369 U.S. 186 (1962) (holding that plaintiffs presented a justiciable constitutional cause of action in claiming that the legislative apportionment method violated their equal protection rights).

¹⁷⁴ See generally *Debating Deliberative Democracy* (James S. Fishkin & Peter Laslett eds., 2003); James S. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (1991).

¹⁷⁵ Fishkin, note 174, at 81 (emphasis in original).

¹⁷⁶ *Id.*

deliberative opinion poll and other processes aimed at improving deliberative democracy should make current generations better able to understand and assess the interests of future generations.

Similarly, Raymond Kopp and Paul Portney propose "mock referenda" to improve policymaking on issues having intergenerational effects.¹⁷⁷ Their notion is to provide a select group of voters with complete information about the likely near-term and long-term effects of various policy options in order to elicit information about those voters' preferences.¹⁷⁸ Although the mock referenda mechanism is proposed as a means of understanding the weight that current generations attach to different intergenerational effects, arguably it could be adapted to gather information about the weight that current generations believe future generations would attach to different intergenerational effects. Again, this should improve the decisionmaking by current generations on policy questions that unavoidably affect the interests of future generations.

These refinements to the political process have definite limitations, however. First, both the deliberative opinion poll and the mock referendum have latent anti-democratic features related to the questions of agenda control and voting procedures. Consider the deliberative opinion poll. In order for this mechanism to succeed, someone must decide what questions will be debated by the deliberative group, what the rules for debate will be, and, once the debate has concluded, how the deliberative opinion poll will be conducted. Similarly, the mock referendum requires an agenda setter and a rule setter to avoid procedural chaos. In ordinary politics, these organizational questions are addressed directly through ordinary political processes, with all the opportunities for political participation that attend other political decisions. Because the deliberative opinion poll and the mock referendum specifically seek to transcend ordinary politics, it hardly seems clear that ordinary political processes will be able to set the rules of the game while ensuring the intended effects. Whoever controls the design of a deliberative opinion poll or a mock referendum involving intergenerational issues will have a substantial influence on whether and how the interests of future generations are weighted.

Additionally, neither the deliberative opinion poll nor the mock referendum can provide future generations with genuine representation in political processes. At best, these mechanisms can improve the quality of information that current generations have about the inter-

¹⁷⁷ Raymond J. Kopp & Paul R. Portney, *Mock Referenda for Intergenerational Decisionmaking*, in *Discounting and Intergenerational Equity* 87 (Paul R. Portney & John P. Weyant eds., 1999).

¹⁷⁸ *Id.* at 91-96.

ests of future generations. Neither mechanism, however, can force current generations to attach any particular weight to those interests; and neither mechanism can remove conflicts between the interests of current generations and future generations.¹⁷⁹ For example, a deliberative opinion poll or a mock referendum conducted in 1939 might have made voters at that time aware that changing Social Security from a prefunded to an unfunded program would shift wealth from (then) future participants to (then) current participants; but even full information on that point may not have changed the outcome at all: Voters in 1939 might have given their own interests far greater weight than the interests of future participants, even with the improved information about the long-term effects of the policy change.

Alternatively, the interests of future generations could be factored into the political process as a counter-majoritarian check on certain policy outcomes. Thus, decisions made by current generations that inappropriately burden future generations could be rendered invalid, in much the same way that policy decisions inappropriately burdening protected groups are struck down.¹⁸⁰ Legislative precommitments on fiscal policy matters—such as mandates for balanced budgets and nondiscretionary reductions in federal expenditures to enforce those mandates—arguably fall within this category. As recent experience with such mandates has established, of course, there is always a question of how tightly such precommitments actually bind policy outcomes once legislators have set their minds to working around them.

Ignoring the enforceability problem, one could formulate a version of such a mandate that expressly takes the interests of future generations into account. For example, the lawmaking process could require that fiscal policy legislation having intergenerational effects not impose a burden on any future generation greater than the largest burden imposed on any current generation. To bring the nonrepresentation problem to the forefront, such a requirement could consider a “future generation” to be any generation that, by reason of its age or by reason of not yet having been born, is not eligible to participate in the processes of representative government and a “current generation” to be any generation that, by reason of its age, is

¹⁷⁹ See also Sunstein & Rowell, note 90, at 178 (noting that the possibility of self-interested preferences undermines attempts to determine the interests of future generations “by consulting the preferences of the present generation”).

¹⁸⁰ This suggests a weak analogy to the constitutional guarantee of equal protection when understood as “reserv[ing] special judicial solicitude for those few groups . . . that are systematically disadvantaged by some failure in the political market and likely to get less than their ‘fair share’ of favorable outcomes.” Levinson, note 2, at 1351. For a fuller development of that analogy in the context of intergenerational equity, see R. George Wright, *The Interests of Posterity in the Constitutional Scheme*, 59 U. Cin. L. Rev. 113 (1990).

eligible to participate in the processes of representative government. Under such a requirement, if any one current generation wanted to impose burdens on future generations, it must be willing to impose a burden of at least the same size on itself.

There are serious limitations to this approach as well. First, it reintroduces all the normative and analytic problems discussed in Parts II and III. Any procedural mechanism intended as a binding precommitment to intergenerational equity will necessarily require the arbitrary selection of a frame for analysis (for example, all fiscal policy legislation). And comparing the net burdens that a particular item of legislation would impose on a future generation to the net burdens it would impose on current generations for the purpose of defining what is a legislatively valid outcome assumes that one can have a high degree of confidence in the measurements themselves; as discussed above, that confidence is misplaced in the case of quantifying intergenerational effects. More fundamentally, however, this is a conceptually flawed approach to the nonrepresentation problem because it does not really attempt to introduce the interests of future generations to the political process; rather, it treats those interests as unconditional trumps. In other words, it overplays the analogy between protected groups within current generations (such as specific racial or ethnic groups) and future generations; although trumps are appropriate in the intragenerational context of equal protection, it by no means follows that concern for the interests of future generations should suppress the right of current generations to self-determination through the legislative process.

In sum, conceivable changes to the political process would not satisfactorily address the inevitable nonrepresentation problem presented whenever present policy decisions affect the interests of future generations. Although current generations can be made to understand better the likely effects of their choices on future generations, current generations cannot be made to assign any particular weight to those interests. Attempting to place formal binds on legislative outcomes reintroduces the very undesirable arbitrariness of framing and measuring; in any event, such binds almost surely give too much weight to the interests of future generations by treating those interests as outright trumps on the policy decisions of current generations.¹⁸¹

¹⁸¹ See Shaviro, note 56, at 177-78 (rejecting notion that political process can adequately take account of future generations' interests).

C. The Interests of Overlapping Generations

All the same, the seriousness of the nonrepresentation problem should not be overstated. Current generations generally do take into account the interests of future generations to the extent that parents and grandparents, when participating in the political process, assess the effects of their policy decisions on their children and grandchildren who are not yet able to vote or otherwise participate in representational government. We generally take it for granted, for example, that parents will vote in the interests of their children on matters such as education policy, health policy, and compulsory military service. The fact that one generation passes along a fiscal burden to the next generation—such as happened in the formative years of the Social Security program—does not necessarily indicate that the earlier generation ignored the interests of the later generation. Rather, it may indicate that the earlier generation judged the burden to be fair; it may even indicate that the earlier generation in good faith believed that the later generation would have agreed with the judgment of the earlier generation (had it been possible to consult the later generation at the time the decision was made).

This *de facto* guardianship on matters of public policy derives directly from the affection that parents and grandparents feel for their children and grandchildren; no binding mechanism of political process is needed to ensure that most parents vote for the well-being and prosperity of their children most of the time. But this also suggests an inherent limitation to the guardianship: Although parents may look out sharply for the interests of their children in the political process, it is doubtful that they are nearly so vigilant on matters that would affect their more distant descendants. Thus, a political proposal to reinstate compulsory military service might arouse strong passions among parents of young children; a political proposal to limit the purchase of gasoline so that the earth's supply of crude oil will last for an additional 100 years might seem to those same parents as nothing more than a present economic burden that would benefit distant peoples for whom they have little concern. The notion that current generations inevitably will take the interests of future generations into account through parental concern and affection suggests at most that current generations will look one or two generations forward.

But perhaps that is sufficient. Current and future generations overlap continuously, and the tie between current and future generations is continuously renewed as children grow to adults and have their own children. Peter Laslett and James Fishkin use the metaphor of a pro-

cession to account for the relations between generations;¹⁸² that image has many implications—among them, the fact that each generation has immediate contact with its predecessor and its successor but not with the generations that more remotely precede or follow it. Because of this continuous contact in the procession, one can perhaps rely on the natural affection that earlier members in the procession have for immediately following members. If each generation looks out for the interests of the immediately following generation until that following generation is able to protect its own interests, the problem of equity between the generations will have been at least partly addressed.

The prospects for relying on political processes for resolving intergenerational concerns might be greater still if each generation generally limits the scope of its policymaking, as much as possible, to policies having only temporary effects.¹⁸³ As George Yin demonstrates, temporary-effect lawmaking (such as reductions in income tax rates that expire after a stated number of years) may increase fiscal restraint responsibility by causing policymakers to take full account of the effects of their fiscal policy changes.¹⁸⁴ Yin's point could be generalized: If each generation were to limit its use of the political processes, as much as possible, to temporary-effect policymaking that extended no further into the future than the expected lives of that generation's children or grandchildren, we could have greater confidence that the generation in control of the political process had taken into account many (possibly most) of the intergenerational interests affected by its policy decisions. At any rate, there will be less cause for concern that the ordinary processes for governance cannot resolve questions of fairness between the generations at least as well as they resolve questions of fairness within a single generation.

V. CONCLUSION

Assessing fiscal policy from the perspective of intergenerational equity presents substantial problems. There are genuine limitations on our ability to measure intergenerational effects and, importantly, a fundamental arbitrariness in defining the relevant framework. Even a perfect measurement of intergenerational effects, however, remains

¹⁸² Peter Laslett & James S. Fishkin, Introduction: Processional Justice, in *Justice Between Age Groups and Generations*, note 90, at 11-14.

¹⁸³ See generally George K. Yin, *Temporary-Effect Legislation and Fiscal Responsibility* (unpublished manuscript); see also Jacob E. Gersen, *Temporary Legislation*, 74 U. Chi. L. Rev. 247 (2007) (suggesting that temporary legislation should be the norm, rather than the exception, based on historical, analytic, and empirical evidence).

¹⁸⁴ Yin, note 183.

useless without a robust norm of intergenerational equity to evaluate whether those measured effects are fair. And yet the question is overwhelmingly important. Fiscal policy affects people alive today and people who will be alive in the future, and we cannot responsibly make decisions about those policy matters in ignorance or disregard of how they affect future generations. The question of intergenerational equity in fiscal policy is hardly misplaced even though we have no good answers. But, at a minimum, the bonds of affection between continuously overlapping generations suggest that, as with other aspects of government policy, the fiscal policy interests of the near future generations can be taken into account through ordinary political processes.

